IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

BRENNAN CENTER FOR JUSTICE AT NEW YORK UNIVERSITY SCHOOL OF Plaintiff, - against - U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, Defendants.	Case No: 22-cv-07038-CM AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF FOR VIOLATION OF THE FREEDOM OF INFORMATION ACT, 5 U.S.C. § 552 *et seq*.

Plaintiff the Brennan Center for Justice at New York University School of Law ("Brennan Center" or "Plaintiff"), by and through its undersigned attorneys, brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq*., for declaratory, injunctive, and other appropriate relief to compel the disclosure and release of documents from Defendants United States Department of Homeland Security ("DHS") and United States Immigration and Customs Enforcement ("ICE").[1] In support thereof, Plaintiff alleges as follows:

INTRODUCTION

1. Plaintiff Brennan Center is a bipartisan, not-for-profit law and public policy institute that works to reform, revitalize, and, when necessary, defend American systems of democracy and justice.

2. On December 7, 2021, Plaintiff submitted a FOIA Request (the "Request") to Defendants Department of Homeland Security and U.S. Immigration and Customs Enforcement

[1] This complaint does not purport to represent the position, if any, of New York University School of Law.

for records regarding their use of third-party providers for social media monitoring operations. *See* Ex. A.

3. DHS routinely monitors individuals' social media platforms to conduct investigations, identify potential threats, and screen travelers and immigrants.[2] DHS engages vendors to support its social media monitoring efforts. However, limited information is available about the relationships between the federal government and social media surveillance contractors, and private vendors may not be subject to the same legal or institutional constraints as government agencies.

4. The records regarding the government's social media monitoring efforts sought by the Request are essential for ensuring transparency and accountability of federal agencies with a wide-ranging mandate and a checkered history when it comes to the rights of civilians. Agency surveillance of social media is largely unregulated and because social media can expose sensitive personal information about individuals, including religious and political views, personal and professional associations, and health and sexuality, the government's monitoring of social media has the potential to stifle core freedoms, like speech, assembly, and religion.[3] Indeed, the risk is even more significant for minority faith and racial groups, since many agencies conducting social media surveillance have historically targeted minorities and their social movements.[4] Given the intersection between government oversight and constitutional freedoms, particularly for discrete and insular minorities, the public interest at stake in the release of these documents is of the utmost importance.

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[2] Rachel Levinson-Waldman, *et al.*, *Social Media Surveillance by the U.S. Government*, BRENNAN CENTER FOR JUSTICE (Jan. 7, 2022), https://www.brennancenter.org/our-work/research-reports/social-media-surveillance-us-government.

[3] *Id.*

[4] Harsha Panduranga & Emil Mella Pablo, *Federal Government Social Media Surveillance, Explained*, BRENNAN CENTER FOR JUSTICE (Feb. 9, 2022), https://www.brennancenter.org/our-work/research-reports/federal-government-social-media-surveillance-explained.

5. The Freedom of Information Act "focuses on the citizens' right to be informed about 'what their government is up to,'" by requiring the release of "[o]fficial information that sheds light on an agency's performance of its statutory duties." *DOJ v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 750, 773 (1989) (citation omitted). "[D]isclosure, not secrecy, is the dominant objective" of FOIA. *Dep't of Interior v. Klamath Water Users Protective Ass'n*, 532 U.S. 1, 8 (2001) (internal quotation marks and citations omitted).

6. Defendants DHS and ICE have failed to comply with their obligations under FOIA. As of the date of this filing, Defendant ICE has not issued a final determination in response to Plaintiff's Request despite closing it. Defendant DHS, without conducting any searches, transferred the Request to its Office of Intelligence & Analysis ("I&A"), which subsequently closed the Request and denied the administrative appeal, stating that it did not possess any responsive records.

7. No Defendant has yet produced a single document.

8. Plaintiff brings this action to compel Defendants to immediately process and release to Plaintiff all responsive records that they have unlawfully withheld.

PARTIES

9. Plaintiff Brennan Center is a nonprofit, nonpartisan law and policy institute that is focused on fundamental issues of democracy and justice. The Brennan Center's Liberty and National Security ("LNS") Program uses innovative policy recommendations, litigation, and public advocacy to advance effective national security policies that respect the rule of law and constitutional values. The Brennan Center regularly writes and publishes reports and articles and appears on media outlets to address U.S. policy issues ranging from counterterrorism efforts to

voting rights to campaign finance laws. The Brennan Center is a 501(c)(3) corporation headquartered at 120 Broadway in New York, New York.

10. Defendant Department of Homeland Security is a federal cabinet level department and an "agency" within the meaning of 5 U.S.C. § 552(f)(1). The Office of Intelligence & Analysis is an office within DHS. Defendant U.S. Immigration and Customs Enforcement is a component agency of DHS that enforces U.S. immigration law. Defendants have possession of and control over the documents and information requested by Plaintiff.

JURISDICTION AND VENUE

11. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B), 5 U.S.C. §§ 701-706, and 28 U.S.C. § 1331.

12. Venue in the Southern District of New York is proper under 5 U.S.C. § 552(a)(4)(B) because the Brennan Center has its principal place of business in New York City.

STATUTORY BACKGROUND

13. The Freedom of Information Act provides that any member of the public may request records from a United States agency. Upon receipt of a FOIA request, an agency must determine within 20 business days—or, in "unusual circumstances," within 30 business days—whether it will comply with a request and notify the requestor of its determination and reasoning in writing. 5 U.S.C. §§ 552(a)(6)(A)(i)-B(i). This determination must also timely indicate the scope of the documents the agency intends to produce and the exemptions, if any, that it will apply to withhold responsive documents.

14. In response to a FOIA request, an agency, after engaging in a reasonable search for responsive records, including of any field offices that may possess relevant materials, must

disclose in a timely manner all records that do not fall within nine narrowly construed statutory exemptions. 5 U.S.C. §§ 552(a)(3)(A), (C), (b)(1)-(9).

15. Typically, a requester under FOIA must appeal agency action administratively before commencing litigation. However, if the agency has failed to abide by its obligations to issue a determination on the request or a determination on an administrative appeal within the statutory timeframe, the administrative appeal process is considered exhausted. 5 U.S.C. § 552(a)(6)(C)(i).

16. Upon complaint, a district court can enjoin an agency from withholding records and order production of records improperly withheld. 5 U.S.C. § 552(a)(4)(B).

FACTUAL BACKGROUND

17. "Social media monitoring" is the use by government entities of social media platforms such as Facebook, Twitter, Snapchat, and Instagram to gather individuals' information for purposes purportedly including identifying potential threats, reviewing breaking news, collecting information about individuals and groups, conducting criminal investigations, gathering intelligence, and gauging public sentiment.

18. Social media monitoring includes one or more of the following types of activities: 1) tracking, monitoring, or collecting information about an individual, group, or affiliation (such as a hashtag) via publicly available information; 2) using an informant, a friend of the target, or an undercover account to obtain information from a protected, private, or otherwise unavailable account or page; 3) using software like Voyager Labs' VoyagerAnalytics, products from Logically, Inc. like Logically Intelligence, or ShadowDragon products such as SocialNet or OI Monitor to monitor individuals, groups, associations or locations; or 4) issuing a subpoena, warrant, or other form of legal process to a social media platform for data held by that platform.

19. Social media is a forum for the exchange of ideas. Platforms like Facebook and Twitter have proven to be invaluable tools for connecting and organizing around a variety of issues and across diverse movements. In a time when social media is the "modern public square,"[5] social media monitoring by the government presents significant risks to civil liberties and civil rights.

20. Like other types of surveillance, social media monitoring chills free expression, the exchange of ideas, collective organizing, and association. The deleterious effects of surveillance on free speech have been empirically documented.[6] Federal agencies' outsourcing of broadscale social media surveillance to third-party vendors raises additional concerns. Public information regarding the relationship between the federal government and contractors that offer social media monitoring services is limited and private companies may not be subject to the same legal and institutional constraints as public agencies, weakening safeguards against abuse.[7]

21. Publicly available records indicate that DHS engages vendors to support its social media monitoring efforts. An *Intercept* article revealed that ICE had two contracts for ShadowDragon social media surveillance software, which allows law enforcement to collect data from, *inter alia*, social media websites, Amazon, and dating apps.[8] On the federal procurement

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[5] *Packingham v. N. Carolina*, 137 S. Ct. 1730, 1737 (2017) (quoting *Reno v. Am. Civil Liberties Union*, 521 U.S. 844, 870 (1997)).

[6] *See, e.g.*, Faiza Patel, *et al*., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; Jonathon W. Penney, *Chilling Effects: Online Surveillance and Wikipedia Use*, 31 BERKELY TECH L. J. 1, 117-182 (2016), https://btlj.org/data/articles2016/vol31/31_1/0117_0182_Penney_ChillingEffects_WEB.pdf, (last visited Aug. 15, 2022); Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 JOURNALISM AND MASS COMM. Q. 2, 296-311 (Mar. 6, 2016), https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255#articleCitationDownloadContainer; Matthew A. Wasserman, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U. L. REV. 5, 1786-1826 (2015), https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Wasserman.pdf, (last visited Aug. 15, 2022).

[7] Levinson-Waldman, *et al.*, *supra* note 2, at 2.

[8] Michael Kwet, *ShadowDragon: Inside the Social Media Surveillance Software that can Watch Your Every Move*, INTERCEPT (Sept. 21, 2021), https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware/.

website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet.[9] Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority like border security.[10] In addition, DHS officials have stated publicly that it is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection.[11] While those vendors have not been definitively identified, media reports reveal that DHS has had at least preliminary conversations with Logically, Inc.[12]

22. Given the meager public information about the vendors with which DHS has contracted as well as the outsized impact of social media monitoring on the lives and constitutional liberties of everyday Americans that the records requested will illuminate, the documents sought are of the greatest public importance. To that end, disclosure of this information will contribute significantly to public understanding of the operations and activities of the federal government, specifically DHS's and ICE's social media monitoring operations and their use of third-party providers to surveil individuals online.

PLAINTIFF'S FOIA REQUEST

23. Plaintiff Brennan Center submitted the FOIA Request to Defendants DHS and ICE, I&A within DHS, on December 7, 2021. *See* Ex. A ("Request").

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[9] *See e.g.,* Contract between DHS and Panamerica Computers, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000107_7012_HSHQDC12D00013_7001 (last visited Aug. 15, 2022); Contract between DHS and C & C International Computers & Consultants, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD20FR0000090_7012_HSHQDC12D00011_7001 (last visited Aug. 15, 2022); Contract between DHS and Software Information Resource Corp., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000080_7012_NNG15SD74B_8000 (last visited Aug. 5, 2022).

[10] *Border Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/border-security/ (last visited Aug. 15, 2022); *National Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/national-security/ (last visited Aug. 15, 2022).

[11] Rachael Levy, *Homeland Security Considers Outside Firms to Analyze Social Media After Jan. 6 Failure*, WSJ (Aug. 15, 2021), https://www.wsj.com/articles/homeland-security-considers-outside-firms-to-analyze-social-media-after-jan-6-failure-11629025200.

[12] *Id.*

24. The Request seeks records relating to the nature of social media monitoring services provided or marketed by Voyager Labs, Logically, Inc., or ShadowDragon, or any of their affiliates or subordinates. *Id.*

25. In particular, the Request sought:

1) **Recordkeeping:** All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc. or ShadowDragon products or services for social media monitoring, or searches of social media;

2) **Purchase Agreements and Orders:** All records reflecting a contract or agreement for products or services of Voyager Labs, Logically, Inc. or ShadowDragon;

3) **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc. or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment;

4) **Audits:** All records or, or communications regarding, audits or internal reviews of DHS's use of Voyager Labs, Logically, Inc. or ShadowDragon products or services;

5) **Training Materials:** All training documents pertaining to Voyager Labs, Logically, Inc. or ShadowDragon products or services;

6) **Legal Justification:** All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc. or ShadowDragon products or services;

7) **Information Sharing Communications:** All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services;

8) **Nondisclosure Agreements:** All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon;

9) **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services; and

10) **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon.

Id.

26. The Request limited the time period of the search to the window from January 1, 2016, through the date of the production of records. *Id*.

27. Plaintiff sought expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. 5.5(e). *See id.*

28. Plaintiff also sought a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. 5.11(k)(1) on the basis that disclosure of the requested records was in the public interest because disclosure was likely to contribute significantly to the public understanding of the activities or operations of the federal government and was not primarily in Plaintiff's commercial interest. *See id*. The Brennan Center further stated that it qualified for a fee waiver because of its role as a representative of the news media, and that it was an "educational institution" pursuant to 6 C.F.R. 5.11(d). *See id.*

DEFENDANT DHS'S RESPONSE AND PLAINTIFF'S EXHAUSTION OF ADMINISTRATIVE REMEDIES

29. On December 7, 2021, Defendant Department of Homeland Security acknowledged receipt of the Request and assigned it case number 2022-HQFO-00284. *See* Ex. B.

30. On December 9, 2021, DHS wrote to the Brennan Center stating that it had transferred the Request to the FOIA Officer in DHS's Office of Intelligence & Analysis—which was already a recipient of the Request—and closed the Request. *See* Exs. C & D. DHS did not conduct its own searches upon receipt of the Request. *Id.*

31. Two days prior, on December 7, 2021, I&A had acknowledged receipt of the Request and assigned it case number 2022-IAFO-00037. *See* Ex. E.

32. On January 10, 2022, the Brennan Center emailed I&A, requesting an update on the estimated delivery date for the Request. *See* Ex. F.

33. On January 12, 2022, I&A again acknowledged the Request, and invoked a ten-day extension of time to process the Request. *See* Ex. G.

34. On March 14, 2022, the Brennan Center requested a status update on the Request, using the online portal. *See* Ex. H.

35. By April 19, 2022, the Brennan Center had not received a response to its email or to its Request. Since well over 30 business days had passed and I&A had not issued a final determination or produced a single document, the Brennan Center submitted an administrative appeal. *See* Ex. I.

36. On August 2, 2022, I&A sent an email to Brennan Center stating the status of the request had been updated to "Closed." *See* Ex. J.

37. Yet, simultaneously on August 2, 2022, DHS acknowledged receipt of the Brennan Center's administrative appeal. *See* Ex. K.

38. On the same day, I&A sent a denial of the appeal to an email address they had previously been informed was no longer the correct contact information. *See* Ex. L.

39. On August 3, 2022, Sharon Deshield of DHS messaged the Brennan Center through the portal asking it to confirm receipt of I&A's closure notification. *See* Ex. M. The Brennan Center responded, informing Ms. Deshield that they had received the closure notification but were still awaiting a substantive response from I&A on their request. *Id.*

40. Despite its clear obligation under FOIA, DHS failed to search its records, provide any substantive determination in response to the Request, or release any records responsive to the Request within the statutory timeframe.

41. Because Defendant DHS has not complied with the statutory time limits set forth in the FOIA statute, Plaintiff's administrative remedies are considered exhausted under 5 U.S.C. § 552(a)(6)(C)(i).

DEFENDANT ICE'S RESPONSE AND PLAINTIFF'S EXHAUSTION OF ADMINISTRATIVE REMEDIES

42. On December 7, 2021, Defendant Immigration and Customs Enforcement acknowledged receipt of the Request and assigned it case number 2022-ICFO-02964. *See* Ex. N.

43. On January 12, 2022, the Brennan Center sent an email to ICE, because it had not received any documents or a notice invoking an extension pursuant to FOIA. *See* Ex. O.

44. On January 13, 2022, ICE acknowledged the Request and belatedly invoked a ten-day extension to respond. *See* Ex. P.

45. On March 14, 2022, the Brennan Center sent a message through the DHS PAL portal, requesting an update on the status of the Request. *See* Ex. Q.

46. By April 19, 2022, the Brennan Center had not received a response to its email nor to its Request. Since well over 30 business days had passed and ICE had not issued a final determination or produced a single document, the Brennan Center sent a letter of appeal. *See* Ex. R.

47. On May 17, 2022, the Brennan Center followed up with ICE seeking an update on the status of their appeal. *See* Ex. S.

48. On June 2, 2022, ICE emailed the Brennan Center stating the status of the ICE Appeal had been updated to "In Process." Ex. T.

49. On July 12, 2022, without issuing any response to the administrative appeal, ICE informed Plaintiff that the Request had been closed. *See* Ex. U.

50. As of the filing of this Complaint, ICE has still not issued a substantive response to the administrative appeal.

51. As of the filing of this Complaint, Plaintiff still has not received any responsive records or any other substantive reply to its Request from ICE.

52. Despite its clear obligation under FOIA, Defendant ICE has not provided any substantive determination in response to the Request nor released any records responsive to the Request within the statutory timeframe.

53. Because Defendant ICE has not complied with the statutory time limits set forth in the FOIA statute, Plaintiff's administrative remedies are considered exhausted under 5 U.S.C. § 552(a)(6)(C)(i).

CAUSE OF ACTION

(Violation of Freedom of Information Act)
5 U.S.C. § 552(a)
Against All Defendants

54. Plaintiff incorporates the above paragraphs as if set forth fully herein.

55. Defendants DHS and ICE have a legal duty under FOIA to determine whether to comply with a request within 20 days after receiving the Request or within 30 days after invoking an extension. Defendants DHS and ICE have a legal duty to conduct an adequate search of their records for materials responsive to Plaintiff's Request. Defendants DHS and ICE also have a legal duty to timely notify the requestor of the agency's determination and the reasons therefore.

56. The Brennan Center has a legal right under FOIA to obtain the agency records it requested in the Request. There is no legal basis for Defendants' failure to timely respond to Plaintiff's Request and provide all records responsive to the Request to Plaintiff.

57. Defendants have violated 5 U.S.C. §§ 552(a)(6)(A)-(B) and applicable regulations promulgated thereunder by failing to determine whether to comply with Plaintiff's Request and communicate such determination to Plaintiff within 30 days.

58. Defendants DHS and ICE's failure to timely release agency records in response to Plaintiff's Request has violated 5 U.S.C. § 552(a)(3)(A).

59. Defendants DHS and ICE have violated 5 U.S.C. §§ 552(a)(3)(C)-(D) by failing to make reasonable efforts to search for records responsive to Plaintiff's Request.

60. 5 U.S.C. § 552(a)(4)(B) authorizes the grant of injunctive relief to Plaintiff Brennan Center because Defendants DHS and ICE continue to flout FOIA and improperly withhold agency records. Because Defendants' refusal to respond to Plaintiff's Request prevents Plaintiff from educating the public and increasing public awareness about DHS and ICE's social media monitoring operations, Plaintiff will continue to suffer irreparable injury from Defendants' withholding of government documents responsive to Plaintiff's Request in defiance of FOIA mandates.

61. 28 U.S.C. § 2201 authorizes declaratory relief because an actual and justiciable controversy exists regarding Defendants' improper withholding of agency records in violation of FOIA.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff the Brennan Center respectfully requests that the Court award it the following relief:

A. Enter judgment that Defendants' failure to determine within the statutorily appointed 30 days whether to comply with the Request and timely notify Plaintiff of such determination and its reason violates FOIA;

B. Enter judgment that Defendants' unlawful withholding of the records requested violates FOIA;

C. Enter an order requiring each Defendant to immediately release any and all responsive and not otherwise exempt records to Plaintiff;

D. Award Plaintiff its reasonable costs and attorneys' fees pursuant to 5 U.S.C. § 552(a)(4)(E); and

E. Grant such further relief as the Court may deem just and proper.

Dated: New York, New York
September 12, 2022

Respectfully submitted,

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EXHIBIT A

BRENNAN CENTER FOR JUSTICE

December 7, 2021

Lynn Parker Dupree
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20528-065

Freedom of Information Act Office
Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, D.C. 20229

Via: Department of Homeland Security Freedom of Information Act Public Access Portal and FOIAOnline.

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request to the Department of Homeland Security (DHS), the Office of Intelligence and Analysis (I&A), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) (collectively referred to below as "DHS" or "the Department"), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DHS implementing regulations, 6 C.F.R. §§ 5.1 through 5.36. It is also a request for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(6), and for a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii) and (iii) and 6 C.F.R. §§ 5.11(d) and (k).

Background

In general, "social media monitoring" is a term describing the use of social media platforms like Facebook, Twitter, Snapchat, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news,

collecting individuals' information, conducting criminal investigations and intelligence, and gauging public sentiment.

Social media monitoring includes four types of activities: (1) monitoring or tracking an individual, a group, or an affiliation (*e.g.*, an online hashtag) via publicly available information; (2) using an informant, a friend of the target, or an undercover account to obtain information from a protected, private, or otherwise unavailable account or page; (3) using software like Voyager Labs' VoyagerAnalytics, Logically, Inc. products like Logically Intelligence, or ShadowDragon products such as SocialNet or OI Monitor to monitor individuals, groups, associations, or locations; or (4) issuing a subpoena, warrant, or other form of legal process to a social media platform for data held by that platform.

Social media is a crucial forum for the exchange of ideas, particularly in this time of unprecedented public activism and political engagement. Social media platforms like Facebook, Twitter, and Instagram have proven to be an invaluable tool for connecting and organizing around a variety of issues and across diverse movements. In a time when social media is recognized as akin to the "modern public square,"[1] social media monitoring has significant civil rights implications. Like other forms of surveillance, social media monitoring impacts what people say and with whom they interact online. The deleterious effects of surveillance on free speech have been well documented in empirical research.[2] The use of third-party vendors to facilitate social media monitoring raises additional concerns, including reduced transparency regarding the scope and capabilities of these services.

Publicly available records indicate DHS engages vendors to support its social media monitoring efforts. For example, an article in the *Intercept* revealed that ICE had two

[1] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. Am. Civ. Liberties Union*, 521 U. S. 844, 868 (1997)).

[2] *See, e.g.*, Faiza Patel et al., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; Jonathon W. Penney, *Chilling Effects: Online Surveillance and Wikipedia Use*, 31 BERKELEY TECH. L. J. 1, 117-182 (2016), https://btlj.org/data/articles2016/vol31/31_1/0117_0182_Penney_ChillingEffects_WEB.pdf; Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 JOURNALISM AND MASS COMM. Q. 2, 296-311 (2016), https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255#articleCitationDownloadContainer; Matthew A. Wasserman, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U. L. REV. 5, 1786-1826 (2015), https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Wasserman.pdf.

contracts for ShadowDragon products.[3] On the federal procurement website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet.[4] Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority, like border security.[5] In addition, DHS officials have stated publicly that the Department is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection.[6] While those vendors have not been definitively identified, DHS has had at least preliminary conversations with Logically, Inc.[7]

Thus, despite widespread public interest in social media monitoring by law enforcement and security officers,[8] and some sparse publicly available information about vendors with

[3] Michael Kwet, *ShadowDragon: Inside the Social Media Surveillance Software that can Watch Your Every Move*, INTERCEPT (Sept. 21, 2021), https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware/.

[4] *E.g.*, Contract between DHS and Panamerica Computers, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000107_7012_HSHQDC12D00013_7001 (last visited Dec. 7, 2021); Contract between DHS and C & C International Computers & Consultants, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD20FR0000090_7012_HSHQDC12D00011_7001 (last visited Dec. 7, 2021); Contract between DHS and Software Information Resource Corp., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000080_7012_NNG15SD74B_8000 (last visited Dec. 7, 2021).

[5] *Border Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/border-security/ (last visited Nov. 2, 2021); *National Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/national-security/ (last visited Nov. 2, 2021).

[6] Rachael Levy, *Homeland Security Considers Outside Firms to Analyze Social Media After Jan. 6 Failure*, WALL ST. J. (Aug. 15, 2021), https://www.wsj.com/articles/homeland-security-considers-outside-firms-to-analyze-social-media-after-jan-6-failure-11629025200

[7] *Id.*

[8] *See, e.g.*, Johana Bhuiyan & Sam Levin, *Revealed: the software that studies your Facebook friends to predict who may commit a crime*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/police-surveillance-technology-voyager; Sam Levin & Johana Bhuiyan, *Exclusive: LAPD partnered with tech firm that enables secretive online spying*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/los-angeles-police-surveillance-social-media-voyager; Sam Levin, *Revealed: LAPD officers told to collect social media data on every civilian they stop*, GUARDIAN (Sept. 8, 2021), https://www.theguardian.com/us-news/2021/sep/08/revealed-los-angeles-police-officers-gathering-social-media; Leah Hope, *Chicago police monitor social media as crime-fighting strategy; sociologist, ACLU urge caution*, ABC7 EYEWITNESS NEWS (Aug. 13, 2020), https://abc7chicago.com/chicago-police-aclu-columbia-university-professor-desmond-patton-alderman-brendan-reilly/6369604/; Kwet, *supra* note 3.

whom the Department has contracted or may be contracting, the public lacks sufficient insight into the current capabilities and limitations of DHS's social media monitoring operations, including its use of third-party providers. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by Voyager Analytics, Logically, Inc., or ShadowDragon, or any of their affiliates or subsidiaries (collectively referred to below as "Voyager Analytics, Logically, Inc., or ShadowDragon"), to DHS.

Request

The Brennan Center specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. **Recordkeeping**: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. **Purchase Agreements and Orders**: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. **Audits**: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5. **Training Materials**: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6. **Legal Justifications**: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. **Information Sharing Communications**: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.[9]

8. **Nondisclosure Agreements**: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a "compelling need" for these records because the information

[9] *See, e.g.*, DEP'T OF JUSTICE OFFICE OF PUB. AFFAIRS, ATTORNEY GENERAL WILLIAM P. BARR'S STATEMENT ON PROTESTS IN WASHINGTON, D.C. (June 2, 2020), https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-protests-washington-dc; Elizabeth Crisp, *Leaked Document Shows SWAT Teams, Sniper-trained Units Sent to D.C. Amid Protests*, NEWSWEEK (June 5, 2020), https://www.newsweek.com/leaked-document-shows-swat-teams-sniper-trained-units-sent-dc-amid-protests-1509087; Colleen Long et al., *Trump's show of federal force sparking alarm in cities*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/politics/courts_law/trump-to-send-federal-agents-to-chicago-maybe-other-cities/2020/07/21/af5c5a98-cb67-11ea-99b0-8426e26d203b_story.html; Jasmine Aguilera, *ICE Agents Detain a Police Brutality Protester, Reportedly a U.S. Citizen and Military Vet, in New York City*, TIME (June 6, 2020), https://time.com/5849517/protester-new-york-city-protests-immigration-ice/; Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, NEW YORK TIMES (June 19, 2020), https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html.

requested is urgently required by an organization "primarily engaged in disseminating information" to "inform the public concerning actual or alleged Federal Government activity." U.S.C. §§ 552(a)(6)(E)(i)(I), (a)(6)(E)(v); 6 C.F.R. § 5.5(e)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). The U.S. District Court for the District of Columbia has found that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). The Brennan Center regularly writes and publishes reports and articles and makes appearances on various media outlets, addressing U.S. policy issues ranging from counterterrorism efforts to voting rights to campaign finance laws, and it will continue to do so for the foreseeable future.[10] *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020) ("Defendants do not dispute the Brennan Center's status as an organization 'primarily engaged in disseminating information,' and other courts have found that similar organizations meet this standard.").

Furthermore, the Brennan Center urgently requires the information sought by this request to inform the public of federal government activity: DHS's purchase and use of social media monitoring products or services. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). This information is of interest to the many members of the general public concerned about agencies like DHS monitoring and recording their social media activity[11]**.** Civil society organizations are also seeking greater clarity about the collection of social

[10]A complete list of the Brennan Center's recent publications is available at, https://www.brennancenter.org/search/?type=analysis,archive,policy_solution,report,resource,statement,testimony,fact_sheet,explainer,series,expert_brief,legislation,newsletter,project&.

[11] *See, e.g.*, Kevin Matthews, *Don't Spy on Immigrants' Social Media*, CARE2 PETITIONS, https://www.thepetitionsite.com/143/518/650/dont-spy-on-immigrants-social-media-accounts-dhs/ (last visited Dec. 7, 2021); *BREAKING: Homeland Security is spying on 40 million Americans and anyone they talk to online*, ACTION NETWORK, https://actionnetwork.org/petitions/breaking-dhs-will-begin-collecting-social-media-information-on-immigrants-green-card-holders-naturalized-citizens-and-anyone-in-touch-with-them (last visited Dec. 7, 2021).

media data by federal agencies.[12] The Brennan Center intends to share any information about the use of Voyager Analytics, Logically, Inc., or ShadowDragon to surveil social media that it obtains through this request with the public.

Fee Waiver

The Brennan Center also requests a waiver of all search, review, and duplication fees associated with this request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d) and (k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1).

First, the Brennan Center plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a "representative of the news media" for the same reasons that it is "primarily engaged in dissemination of information." The Brennan Center "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It uses this information to draft reports on, and analyses of, issues of public concern.[13] *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication

[12] *See, e.g.*, Patel, et al., *supra* note 2; *ACLU v. DOJ: FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media*, AM. CIV. LIBERTIES UNION https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media (last updated Mar. 26, 2019)

[13] *See, e.g.*, Harsha Panduranga, *Community Investment, Not Criminalization*, BRENNAN CENTER FOR JUSTICE (June 17, 2021), https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization; Rachel Levinson-Waldman & Harsha Panduranga, *Invasive and Ineffective: DHS Surveillance Since 9/11*, BRENNAN CENTER FOR JUSTICE (Sept. 15, 2021), https://www.brennancenter.org/our-work/analysis-opinion/invasive-and-ineffective-dhs-surveillance-911; Laura Hecht-Felella, *The Fourth Amendment in the Digital Age*, BRENNAN CENTER FOR JUSTICE (Mar. 18, 2021), https://www.brennancenter.org/sites/default/files/2021-03/Fourth-Amendment-Digital-Age-Carpenter.pdf; Rachel Levinson-Waldman & Ángel Díaz, *How to Reform Police Monitoring of Social Media*, BRENNAN CENTER FOR JUSTICE (July 9, 2020), https://www.brennancenter.org/our-work/analysis-opinion/how-reform-police-monitoring-social-media.

of seven books about national and newsletter relating to privacy and civil rights); *see also Nat'l Sec. Archive*, 880 F.2d at 1386 (deeming the National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(e).

The Brennan Center also is also entitled to a waiver because it is an "educational institution." 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with New York University School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1).

The Brennan Center is also entitled to a waiver of all fees, including duplication fees. First, the subject of the requested records clearly concerns "the operations or activities of the federal government," namely DHS's social media monitoring. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1). This connection to the federal government is "direct and clear, not remote or attenuated." *See* 6 C.F.R. § 5.11(k)(2)(i). Disclosure of the requested records is also in the public interest, because it is "likely to contribute to an increased public understanding" of how and to what extent the agency is engaging in social media monitoring. *See* 6 C.F.R. §§ 5.11(k)(2)(ii). Given the dearth of public information on DHS's involvement with and expenditures on social media monitoring activity, disclosure will significantly enhance the public's understanding of this subject. *See* 6 C.F.R. § 5.11(k)(2)(iv).

Finally, disclosure is not primarily in the Brennan Center's commercial interests. *See* 6 C.F.R. § 5.11(k)(3). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress's legislative intent that FOIA be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

Should DHS choose to charge a fee, please inform me via email of the total charges in advance of fulfilling this request at dwyerm@brennan.law.nyu.edu.

Response Required

The Brennan Center appreciates DHS's attention to this request and expects to receive a response on its request for expedited processing within ten (10) business days. *See* 5 U.S.C.

§ 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4). I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(e)(3).

We also request that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to FOIA. 5 U.S.C. § 552(a)(2). We expect the release of all segregable portions of otherwise exempt material. 5 U.S.C. § 552(a)(8)(ii)(II).

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees. We also request that you provide us with the documents in electronic format where possible.

Should you have any questions concerning this request, please contact me via e-mail at dwyerm@brennan.law.nyu.edu.

Sincerely,

/s/ Mary Pat Dwyer

Mary Pat Dwyer
Fellow, Liberty & National Security Program

EXHIBIT B

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Request Acknowledgement by Department of Homeland Security
Date: Tuesday, December 7, 2021 4:06:58 PM

Dear Mary Pat Dwyer,

Request Number 2022-HQFO-00284 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2022-HQFO-00284.

Regards,

Department of Homeland Security

EXHIBIT C

From: foia@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Department of Homeland Security FOIA 2022-HQFO-00284 Final Response
Date: Thursday, December 9, 2021 4:39:06 PM
Attachments: 2022-HQFO-00284 - Final Response .pdf

Good Afternoon,

Attached is our final response to your request. If you need to contact this office again concerning your request, please provide the DHS reference number. This will enable us to quickly retrieve the information you are seeking and reduce our response time. This office can be reached at 866-431-0486.

Regards,

DHS Privacy Office
Disclosure & FOIA Program
STOP 0655
Department of Homeland Security
245 Murray Drive, SW
Washington, DC 20528-0655
Telephone: 1-866-431-0486 or 202-343-1743
Fax: 202-343-4011
Visit our FOIA website

U.S. Department of Homeland Security
Washington, D.C. 20528

Homeland Security

Privacy Office, Mail Stop 0655

December 9, 2021

SENT VIA E-MAIL TO: dwyerm@brennan.law.nyu.edu
Mary Pat Dwyer
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW, Suite 1150
Washington, DC 20036

Re: **2022-HQFO-00284**

Dear Ms. Dwyer:

This letter acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Privacy Office, dated December 7, 2021, and received in this office on December 7, 2021. You requested documents regarding:

1. Recordkeeping: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. Purchase Agreements and Orders: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. Use for Purposes Other Than Background Checks: All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. Audits: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5. Training Materials: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6. Legal Justifications: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. Information Sharing Communications: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.

8. Nondisclosure Agreements: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. Vendor Communications: All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. Internal Communications: All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Due to the subject matter of your request, I am transferring this request to the FOIA Officer for **Office of Intelligence & Analysis (I&A)**, for processing under the FOIA and direct response to you. Please find their contact information below:

Office of Intelligence & Analysis (I&A)
Create an account to avoid delays! DHS PAL
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
Phone: 202-447-3783 | Fax: 202-612-1936 | E-mail: IAFOIA@HQ.DHS.GOV
I&A Office

If you need to contact our office again about this matter, please refer to **2022-HQFO-00284**. You may contact this office at 1-866-431-0486 or 202-343-1743.

Sincerely,

Jimmy Wolfrey
Senior Director, FOIA Operations and Management (Acting)

EXHIBIT D

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Status Update for Request #2022-HQFO-00284
Date: Thursday, December 9, 2021 4:52:20 PM

Dear Mary Pat Dwyer,

The status of your HQ FOIA request #2022-HQFO-00284 has been updated to the following status 'Closed'. To log into the Department of Homeland Security PAL click on the Application URL below.

https://foiarequest.dhs.gov/

Sincerely,

Department of Homeland Security

EXHIBIT E

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Request Acknowledgement by Department of Homeland Security
Date: Tuesday, December 7, 2021 4:10:10 PM

Dear Mary Pat Dwyer,

Request Number 2022-IAFO-00037 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2022-IAFO-00037.

Regards,

Department of Homeland Security

EXHIBIT F

From: Jose Gutierrez
To: IAFOIA@HQ.DHS.GOV
Cc: Mary Pat Dwyer
Subject: Request - 2022-IAFO-00037 Follow Up
Date: Monday, January 10, 2022 1:35:00 PM

Good Afternoon,

We noticed that the estimated delivery date for our FOIA request (2022-IAFO-00037) was on December 28, 2021. We tried to contact the FOIA officer assigned to this request through the DHS PAL portal on January 5, 2022, but have not received a response. Please update us regarding whether the estimated delivery date has been extended (and to what date), as well as whether our requests for a fee waiver and expedited processing have been approved.

Thank you and have a great day,

José Guillermo Gutiérrez (he/him)
Research and Program Associate, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW, Suite 1150
Washington, DC, 20036
Cell: (213)709-9339
Phone: (202)753-5922

EXHIBIT G

U.S. Department of Homeland Security
Office of Intelligence and Analysis
Washington, DC 20528

Homeland Security

January 12, 2022

SENT VIA E-MAIL TO: dwyerm@brennan.law.nyu.edu

Re: **Freedom of Information Act Request 2022-IAFO-00037**

Mary Pat Dwyer
Brennan Center for Justice
At New York University School of Law
1140 Connecticut Ave, NW
Suite 1150
Washington DC, 20036

Dear Requestor Mary Pat Dwyer,

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Office of Intelligence and Analysis (I&A), dated December 7,2021 and received on December 7, 2021 and requesting:

The Brennan Center specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. **Recordkeeping**: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. **Purchase Agreements and Orders**: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. **Audits**: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5.**Training Materials**: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6.**Legal Justifications**: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. **Information Sharing Communications**: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.9

8. **Nondisclosure Agreements**: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner. If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We are presently processing your request. If any responsive records are located, they will be reviewed for determination of whether any can be released. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2022-IAFO-00037.** Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: https://www.dhs.gov/foia-status, by using this FOIA request number. Status information is updated daily. Alternatively, you can download the DHS eFOIA Mobile App, the free app is available for all Apple and Android devices. With the DHS eFOIA Mobile App, you can submit

FOIA requests or check the status of requests, access all of the content on the FOIA website, and receive updates anyplace, anytime.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at I&AFOIA@HQ.DHS.GOV.

Sincerely,
Kimberly H
Kimberly H
Assistant FOIA Officer

EXHIBIT H

View Message

Request Number: 2022-IAFO-00037

Subject*

Request for a Status Update

Message(s)*

Good morning. We would appreciate a status update for this FOIA request (2022-IAFO-00037), which has been "assigned for processing" for two months. Furthermore, we ask that the estimated delivery date for this request (February 10, 2022) be updated, given that the date passed over a month ago.

Close

EXHIBIT I

BRENNAN CENTER FOR JUSTICE

April 19, 2022

FOIA APPEAL

Privacy Office, Attn: FOIA Appeals
Mail Stop 0655
U.S. Department of Homeland Security
2707 Martin Luther King, Jr. Ave. SE
Washington, D.C. 20528-065

Via: DHS PAL.

Re: Appeal of Constructive Denial for FOIA Request No. 2022-IAFO-00037

Dear Sir or Madam:

This an appeal for the failure to respond to and constructive denial of Freedom of Information Act ("FOIA") Request No. 2022-IAFO-00037 submitted by the Brennan Center for Justice at New York University School of Law ("Brennan Center") to the Office of Intelligence and Analysis ("I&A").

On December 7, 2021, the Brennan Center submitted a FOIA request to I&A and other components of the Department of Homeland Security ("DHS") seeking information on I&A's use of social media monitoring products and services. (*See* Exhibit A.) In its Request, the Brennan Center sought expedited processing, explaining why these requests should be granted under applicable authorities. (*Id.* at 5-6.)

On December 7, 2021, I&A acknowledged it had received the Brennan Center's FOIA Request. (*See* Exhibit B.) On the DHS Public Access Link ("PAL") portal, I&A also provided an estimated delivery date of December 28, 2021. On January 5, 2022, the Brennan Center sent a message to I&A through the DHS PAL portal because it had not received any documents, a determination, or a notice from I&A extending the estimated delivery date. (*See* Exhibit C.) I&A did not respond, and on January 10, 2022, the Brennan Center sent another follow up message. (*See* Exhibit D.) On January 12, 2022, I&A sent a letter to the Brennan Center, acknowledging the Request and invoking a ten-day extension to respond. (*See* Exhibit E.) I&A subsequently updated the estimated delivery date on the DHS PAL portal to February 10, 2022. (*See* Exhibit F.) On March 14, 2022, the Brennan Center followed up with I&A through the DHS PAL portal, asking for a status update on the Brennan Center's FOIA Request after not receiving any updates for two months. The Brennan Center also asked for an updated estimated delivery date, which remained

February 10, 2022, on the DHS PAL portal. (*See* Exhibit G.) The Brennan Center has not received a response from I&A.

The Brennan Center hereby appeals (1) I&A's failure to make a final determination or provide responsive documents within the statutory deadline mandated by FOIA; (2) I&A's failure to meet FOIA's expedited determination timeframe; and (3) I&A's constructive denial of the Brennan Center's Request.

Violation of FOIA by Failing to Respond to the Request within the Statutory Timeframes

Upon receipt of a FOIA request, an agency must determine within 20 business days—or, in "unusual circumstances," within 30 business days—whether it will comply with a request and notify the requestor of its determination and reasoning in writing. 5 U.S.C. § 552(a)(6)(A)(i)-(B)(i). I&A claimed a ten-day extension to respond to the Request, (*see* Ex. E at 2), but as of the date of this appeal—over three months after the Brennan Center submitted its FOIA Request—I&A has not issued a final determination or produced a single document in response to the Brennan Center's FOIA Request.

I&A has failed to respond to the Brennan Center's FOIA Request within the timeframe mandated by FOIA. I&A's initial responses merely acknowledged its receipt of the FOIA Request. These communications did not explain "the scope of the documents [that I&A] will produce and the exemptions it will claim." *Jud. Watch, Inc. v. U.S. Dep't of Homeland Sec.*, 895 F.3d 770, 782 (D.C. Cir. 2018) (citation omitted).

Failure to meet FOIA's Expedited Determination Timeframe

FOIA requires expedited processing when "'a request [is] made by a person primarily engaged in disseminating information'" that has an "'urgency to inform the public concerning actual or alleged Federal Government activity.'" *Ctr. for Pub. Integrity v. U.S. Dep't of Def.*, 411 F. Supp. 3d 5, 11 (D.D.C. 2019) (quoting 5 U.S.C. § 552(a)(6)(E)(v)(II)). Where a Request is appropriate for expedition, the agency must process the request "as soon as practicable." *See* 5 U.S.C. § 552(a)(6)(E)(iii); *Brennan Ctr. for Just. at NYU Sch. of L. v. U.S. Dep't of Com.*, 498 F. Supp. 3d 87, 97 (D.D.C. 2020). The Brennan Center's Request meets both criteria, as discussed below, and I&A was therefore obligated to respond to the Request promptly.

As a section 501(c)(3) non-profit organization with a mission to analyze and share information with the public, the Brennan Center is an organization that is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). The Brennan Center meets the statutory definition because it "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Long v. U.S. Dep't of Homeland Sec.*, 113 F. Supp. 3d 100, 106 (D.D.C. 2015) (quoting 5 U.S.C. § 552(a)(4)(A)(ii)(II)). The Brennan Center regularly writes and publishes reports and articles and makes

appearances on various media outlets, addressing U.S. policy issues ranging from counterterrorism efforts to voting rights to campaign finance laws, and it will continue to do so for the foreseeable future.[1] Accordingly, courts regularly find that the Brennan Center and similar organizations are "primarily engaged in disseminating information" within the meaning of FOIA. *Brennan Ctr. for Just. at NYU Sch. of L.*, 498 F. Supp. 3d at 98 ("Defendants do not dispute the Brennan Center's status as an organization 'primarily engaged in disseminating information,' and other courts have found that similar organizations meet this standard.").[2]

Furthermore, the Brennan Center urgently requires the information sought by its Request to inform the public of federal government activity: DHS's purchase and use of social media monitoring products or services. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). This information is of interest to the many members of the public concerned about agencies like DHS monitoring and recording their social media activity,[3] and civil society organizations and policymakers are also seeking greater clarity about the collection of social media data by federal agencies.[4] The Brennan Center intends to share any information about I&A's social media surveillance that it obtains through the Request with the public in order to increase public awareness and contribute to timely debate on this issue.

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[1] A complete list of the Brennan Center's recent publications is available at, https://www.brennancenter.org/library/?langcode=en&.

[2] *See also Leadership Conf. on C.R. v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding definition met where plaintiff's "mission is to serve as the site of record for relevant and up-to-the minute civil rights news and information" and it "disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement"); *Protect Democracy Project, Inc. v. U.S. Dep't of Defense*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017) (finding same where plaintiff "intend[ed] to disseminate the information obtained"; "its 'core mission ... is to inform public understanding on operations and activities of government,' including by 'gather[ing] and disseminat[ing] information that is likely to contribute significantly to the public understanding of executive branch operations and activities'"; and it 'intend[ed] to give the public access to documents transmitted via FOIA on [its] website.'" (alterations in original)).

[3] *See, e.g.,* Kevin Matthews, *Don't Spy on Immigrants' Social Media*, CARE2 PETITIONS, https://www.thepetitionsite.com/143/518/650/dont-spy-on-immigrants-social-media-accounts-dhs/ (last visited Dec. 9, 2021); *BREAKING: Homeland Security is spying on 40 million Americans and anyone they talk to online*, ACTION NETWORK, https://actionnetwork.org/petitions/breaking-dhs-will-begin-collecting-social-media-information-on-immigrants-green-card-holders-naturalized-citizens-and-anyone-in-touch-with-them (last visited Dec. 9, 2021).

[4] *See, e.g.,* Faiza Patel et al., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; *ACLU v. DOJ: FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media*, AM. CIV. LIBERTIES UNION https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media (last updated Mar. 26, 2019)

Constructive Denial of the Request Due to I&A's Delayed Response

Not only does I&A's failure to meet statutory deadlines violate FOIA, it also constitutes a constructive denial of the Brennan Center's Request. "Congress evinced an increasing concern over the timeliness of disclosure, recognizing that delay in complying with FOIA requests may be 'tantamount to denial.'" *Brennan Ctr. for Just. at N.Y.U. Sch. of Law v. United States Dep't of State*, 300 F. Supp. 3d 540, 546 (S.D.N.Y. 2018) (citation omitted); *accord Int'l Refugee Assistance Project, Inc. v. United States Citizenship & Immigr. Servs*., 551 F. Supp. 3d 136, 164 (S.D.N.Y. 2021). Further, I&A has also failed to respond to multiple follow-up messages from the Brennan Center, which were sent after I&A had failed to issue a determination or produce documents by the statutory deadline.

***

For the foregoing reasons, we appeal the denial of expedited processing and constructive denial of our Request. We appreciate your attention to this appeal and expect to receive your response within 20 business days, as required by 5 U.S.C. § 552(a)(6)(A)(ii). Should you have any questions concerning this appeal, please contact the Brennan Center via e-mail at levinsonr@brennan.law.nyu.edu and gutierrezj@brennan.law.nyu.edu.

Sincerely,

/s/ Rachel Levinson-Waldman

Rachel Levinson-Waldman
Deputy Director, Liberty & National Security Program

EXHIBIT A

BRENNAN CENTER FOR JUSTICE

December 7, 2021

Lynn Parker Dupree
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20528-065

Freedom of Information Act Office
Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, D.C. 20229

Via: Department of Homeland Security Freedom of Information Act Public Access Portal and FOIAOnline.

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request to the Department of Homeland Security (DHS), the Office of Intelligence and Analysis (I&A), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) (collectively referred to below as "DHS" or "the Department"), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DHS implementing regulations, 6 C.F.R. §§ 5.1 through 5.36. It is also a request for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(6), and for a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii) and (iii) and 6 C.F.R. §§ 5.11(d) and (k).

Background

In general, "social media monitoring" is a term describing the use of social media platforms like Facebook, Twitter, Snapchat, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news,

collecting individuals' information, conducting criminal investigations and intelligence, and gauging public sentiment.

Social media monitoring includes four types of activities: (1) monitoring or tracking an individual, a group, or an affiliation (*e.g.*, an online hashtag) via publicly available information; (2) using an informant, a friend of the target, or an undercover account to obtain information from a protected, private, or otherwise unavailable account or page; (3) using software like Voyager Labs' VoyagerAnalytics, Logically, Inc. products like Logically Intelligence, or ShadowDragon products such as SocialNet or OI Monitor to monitor individuals, groups, associations, or locations; or (4) issuing a subpoena, warrant, or other form of legal process to a social media platform for data held by that platform.

Social media is a crucial forum for the exchange of ideas, particularly in this time of unprecedented public activism and political engagement. Social media platforms like Facebook, Twitter, and Instagram have proven to be an invaluable tool for connecting and organizing around a variety of issues and across diverse movements. In a time when social media is recognized as akin to the "modern public square,"[1] social media monitoring has significant civil rights implications. Like other forms of surveillance, social media monitoring impacts what people say and with whom they interact online. The deleterious effects of surveillance on free speech have been well documented in empirical research.[2] The use of third-party vendors to facilitate social media monitoring raises additional concerns, including reduced transparency regarding the scope and capabilities of these services.

Publicly available records indicate DHS engages vendors to support its social media monitoring efforts. For example, an article in the *Intercept* revealed that ICE had two

[1] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. Am. Civ. Liberties Union*, 521 U. S. 844, 868 (1997)).

[2] *See, e.g.*, Faiza Patel et al., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; Jonathon W. Penney, *Chilling Effects: Online Surveillance and Wikipedia Use*, 31 BERKELEY TECH. L. J. 1, 117-182 (2016), https://btlj.org/data/articles2016/vol31/31_1/0117_0182_Penney_ChillingEffects_WEB.pdf; Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 JOURNALISM AND MASS COMM. Q. 2, 296-311 (2016), https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255#articleCitationDownloadContainer; Matthew A. Wasserman, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U. L. REV. 5, 1786-1826 (2015), https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Wasserman.pdf.

contracts for ShadowDragon products.[3] On the federal procurement website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet.[4] Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority, like border security.[5] In addition, DHS officials have stated publicly that the Department is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection.[6] While those vendors have not been definitively identified, DHS has had at least preliminary conversations with Logically, Inc.[7]

Thus, despite widespread public interest in social media monitoring by law enforcement and security officers,[8] and some sparse publicly available information about vendors with

[3] Michael Kwet, *ShadowDragon: Inside the Social Media Surveillance Software that can Watch Your Every Move*, INTERCEPT (Sept. 21, 2021), https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware/.

[4] *E.g.*, Contract between DHS and Panamerica Computers, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000107_7012_HSHQDC12D00013_7001 (last visited Dec. 7, 2021); Contract between DHS and C & C International Computers & Consultants, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD20FR0000090_7012_HSHQDC12D00011_7001 (last visited Dec. 7, 2021); Contract between DHS and Software Information Resource Corp., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000080_7012_NNG15SD74B_8000 (last visited Dec. 7, 2021).

[5] *Border Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/border-security/ (last visited Nov. 2, 2021); *National Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/national-security/ (last visited Nov. 2, 2021).

[6] Rachael Levy, *Homeland Security Considers Outside Firms to Analyze Social Media After Jan. 6 Failure*, WALL ST. J. (Aug. 15, 2021), https://www.wsj.com/articles/homeland-security-considers-outside-firms-to-analyze-social-media-after-jan-6-failure-11629025200

[7] *Id.*

[8] *See, e.g.*, Johana Bhuiyan & Sam Levin, *Revealed: the software that studies your Facebook friends to predict who may commit a crime*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/police-surveillance-technology-voyager; Sam Levin & Johana Bhuiyan, *Exclusive: LAPD partnered with tech firm that enables secretive online spying*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/los-angeles-police-surveillance-social-media-voyager; Sam Levin, *Revealed: LAPD officers told to collect social media data on every civilian they stop*, GUARDIAN (Sept. 8, 2021), https://www.theguardian.com/us-news/2021/sep/08/revealed-los-angeles-police-officers-gathering-social-media; Leah Hope, *Chicago police monitor social media as crime-fighting strategy; sociologist, ACLU urge caution*, ABC7 EYEWITNESS NEWS (Aug. 13, 2020), https://abc7chicago.com/chicago-police-aclu-columbia-university-professor-desmond-patton-alderman-brendan-reilly/6369604/; Kwet, *supra* note 3.

whom the Department has contracted or may be contracting, the public lacks sufficient insight into the current capabilities and limitations of DHS's social media monitoring operations, including its use of third-party providers. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by Voyager Analytics, Logically, Inc., or ShadowDragon, or any of their affiliates or subsidiaries (collectively referred to below as "Voyager Analytics, Logically, Inc., or ShadowDragon"), to DHS.

Request

The Brennan Center specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. **Recordkeeping**: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. **Purchase Agreements and Orders**: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. **Audits**: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5. **Training Materials**: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6. **Legal Justifications**: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. **Information Sharing Communications**: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.[9]

8. **Nondisclosure Agreements**: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a "compelling need" for these records because the information

[9] *See, e.g.*, DEP'T OF JUSTICE OFFICE OF PUB. AFFAIRS, ATTORNEY GENERAL WILLIAM P. BARR'S STATEMENT ON PROTESTS IN WASHINGTON, D.C. (June 2, 2020), https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-protests-washington-dc; Elizabeth Crisp, *Leaked Document Shows SWAT Teams, Sniper-trained Units Sent to D.C. Amid Protests*, NEWSWEEK (June 5, 2020), https://www.newsweek.com/leaked-document-shows-swat-teams-sniper-trained-units-sent-dc-amid-protests-1509087; Colleen Long et al., *Trump's show of federal force sparking alarm in cities*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/politics/courts_law/trump-to-send-federal-agents-to-chicago-maybe-other-cities/2020/07/21/af5c5a98-cb67-11ea-99b0-8426e26d203b_story.html; Jasmine Aguilera, *ICE Agents Detain a Police Brutality Protester, Reportedly a U.S. Citizen and Military Vet, in New York City*, TIME (June 6, 2020), https://time.com/5849517/protester-new-york-city-protests-immigration-ice/; Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, NEW YORK TIMES (June 19, 2020), https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html.

requested is urgently required by an organization "primarily engaged in disseminating information" to "inform the public concerning actual or alleged Federal Government activity." U.S.C. §§ 552(a)(6)(E)(i)(I), (a)(6)(E)(v); 6 C.F.R. § 5.5(e)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). The U.S. District Court for the District of Columbia has found that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). The Brennan Center regularly writes and publishes reports and articles and makes appearances on various media outlets, addressing U.S. policy issues ranging from counterterrorism efforts to voting rights to campaign finance laws, and it will continue to do so for the foreseeable future.[10] *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020) ("Defendants do not dispute the Brennan Center's status as an organization 'primarily engaged in disseminating information,' and other courts have found that similar organizations meet this standard.").

Furthermore, the Brennan Center urgently requires the information sought by this request to inform the public of federal government activity: DHS's purchase and use of social media monitoring products or services. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). This information is of interest to the many members of the general public concerned about agencies like DHS monitoring and recording their social media activity[11]**.** Civil society organizations are also seeking greater clarity about the collection of social

[10]A complete list of the Brennan Center's recent publications is available at, https://www.brennancenter.org/search/?type=analysis,archive,policy_solution,report,resource,statement,testimony,fact_sheet,explainer,series,expert_brief,legislation,newsletter,project&.

[11] *See, e.g.*, Kevin Matthews, *Don't Spy on Immigrants' Social Media*, CARE2 PETITIONS, https://www.thepetitionsite.com/143/518/650/dont-spy-on-immigrants-social-media-accounts-dhs/ (last visited Dec. 7, 2021); *BREAKING: Homeland Security is spying on 40 million Americans and anyone they talk to online*, ACTION NETWORK, https://actionnetwork.org/petitions/breaking-dhs-will-begin-collecting-social-media-information-on-immigrants-green-card-holders-naturalized-citizens-and-anyone-in-touch-with-them (last visited Dec. 7, 2021).

media data by federal agencies.[12] The Brennan Center intends to share any information about the use of Voyager Analytics, Logically, Inc., or ShadowDragon to surveil social media that it obtains through this request with the public.

Fee Waiver

The Brennan Center also requests a waiver of all search, review, and duplication fees associated with this request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d) and (k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1).

First, the Brennan Center plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a "representative of the news media" for the same reasons that it is "primarily engaged in dissemination of information." The Brennan Center "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It uses this information to draft reports on, and analyses of, issues of public concern.[13] *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication

[12] *See, e.g.*, Patel, et al., *supra* note 2; *ACLU v. DOJ: FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media*, AM. CIV. LIBERTIES UNION https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media (last updated Mar. 26, 2019)

[13] *See, e.g.*, Harsha Panduranga, *Community Investment, Not Criminalization*, BRENNAN CENTER FOR JUSTICE (June 17, 2021), https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization; Rachel Levinson-Waldman & Harsha Panduranga, *Invasive and Ineffective: DHS Surveillance Since 9/11*, BRENNAN CENTER FOR JUSTICE (Sept. 15, 2021), https://www.brennancenter.org/our-work/analysis-opinion/invasive-and-ineffective-dhs-surveillance-911; Laura Hecht-Felella, *The Fourth Amendment in the Digital Age*, BRENNAN CENTER FOR JUSTICE (Mar. 18, 2021), https://www.brennancenter.org/sites/default/files/2021-03/Fourth-Amendment-Digital-Age-Carpenter.pdf; Rachel Levinson-Waldman & Ángel Díaz, *How to Reform Police Monitoring of Social Media*, BRENNAN CENTER FOR JUSTICE (July 9, 2020), https://www.brennancenter.org/our-work/analysis-opinion/how-reform-police-monitoring-social-media.

of seven books about national and newsletter relating to privacy and civil rights); *see also Nat'l Sec. Archive*, 880 F.2d at 1386 (deeming the National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(e).

The Brennan Center also is also entitled to a waiver because it is an "educational institution." 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with New York University School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1).

The Brennan Center is also entitled to a waiver of all fees, including duplication fees. First, the subject of the requested records clearly concerns "the operations or activities of the federal government," namely DHS's social media monitoring. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1). This connection to the federal government is "direct and clear, not remote or attenuated." *See* 6 C.F.R. § 5.11(k)(2)(i). Disclosure of the requested records is also in the public interest, because it is "likely to contribute to an increased public understanding" of how and to what extent the agency is engaging in social media monitoring. *See* 6 C.F.R. §§ 5.11(k)(2)(ii). Given the dearth of public information on DHS's involvement with and expenditures on social media monitoring activity, disclosure will significantly enhance the public's understanding of this subject. *See* 6 C.F.R. § 5.11(k)(2)(iv).

Finally, disclosure is not primarily in the Brennan Center's commercial interests. *See* 6 C.F.R. § 5.11(k)(3). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress's legislative intent that FOIA be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

Should DHS choose to charge a fee, please inform me via email of the total charges in advance of fulfilling this request at dwyerm@brennan.law.nyu.edu.

Response Required

The Brennan Center appreciates DHS's attention to this request and expects to receive a response on its request for expedited processing within ten (10) business days. *See* 5 U.S.C.

§ 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4). I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(e)(3).

We also request that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to FOIA. 5 U.S.C. § 552(a)(2). We expect the release of all segregable portions of otherwise exempt material. 5 U.S.C. § 552(a)(8)(ii)(II).

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees. We also request that you provide us with the documents in electronic format where possible.

Should you have any questions concerning this request, please contact me via e-mail at dwyerm@brennan.law.nyu.edu.

Sincerely,

/s/ Mary Pat Dwyer

Mary Pat Dwyer
Fellow, Liberty & National Security Program

EXHIBIT B

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Request Acknowledgement by Department of Homeland Security
Date: Tuesday, December 7, 2021 4:10:10 PM

Dear Mary Pat Dwyer,

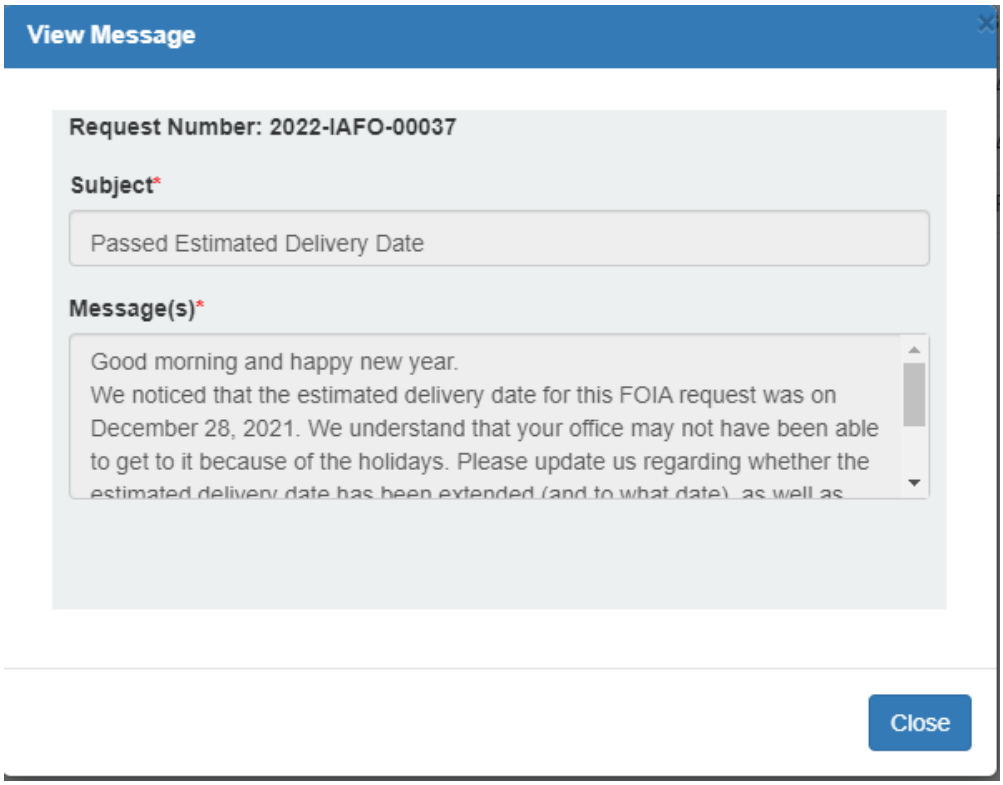
Request Number 2022-IAFO-00037 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2022-IAFO-00037.

Regards,

Department of Homeland Security

EXHIBIT C

Message sent by the Brennan Center to I&A through the DHS PAL portal on 01/05/22



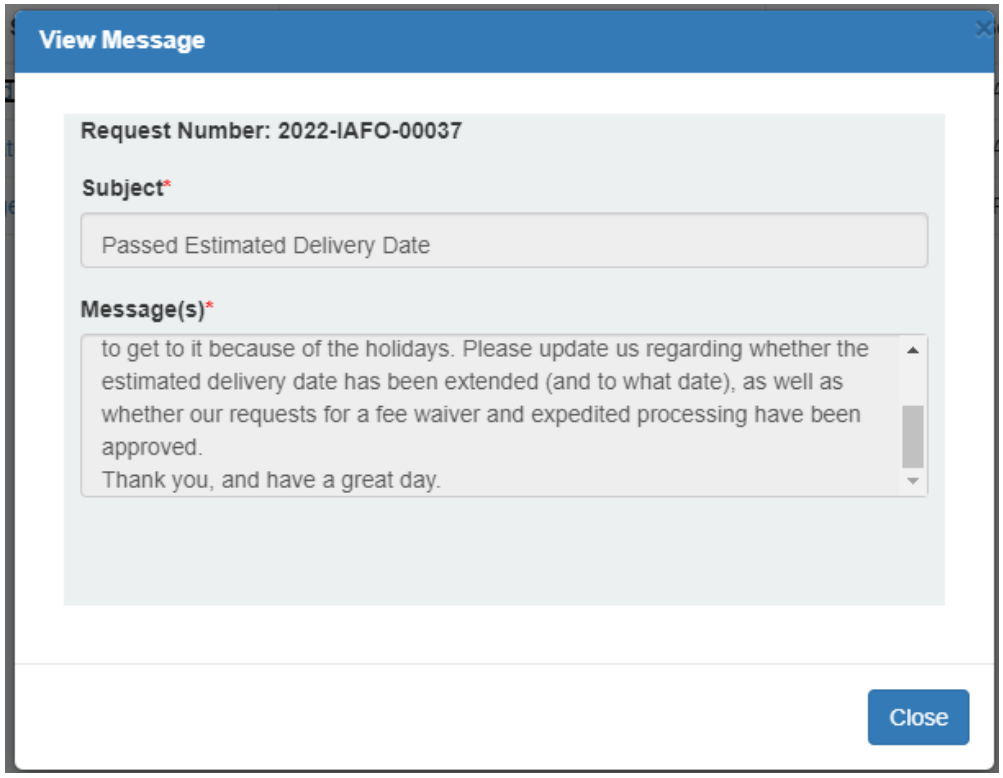


EXHIBIT D

From: Jose Gutierrez
To: IAFOIA@HQ.DHS.GOV
Cc: Mary Pat Dwyer
Subject: Request - 2022-IAFO-00037 Follow Up
Date: Monday, January 10, 2022 1:35:00 PM

Good Afternoon,

We noticed that the estimated delivery date for our FOIA request (2022-IAFO-00037) was on December 28, 2021. We tried to contact the FOIA officer assigned to this request through the DHS PAL portal on January 5, 2022, but have not received a response. Please update us regarding whether the estimated delivery date has been extended (and to what date), as well as whether our requests for a fee waiver and expedited processing have been approved.

Thank you and have a great day,

José Guillermo Gutiérrez (he/him)
Research and Program Associate, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW, Suite 1150
Washington, DC, 20036
Cell: (213)709-9339
Phone: (202)753-5922

EXHIBIT E

U.S. Department of Homeland Security
Office of Intelligence and Analysis
Washington, DC 20528

Homeland Security

January 12, 2022

SENT VIA E-MAIL TO: dwyerm@brennan.law.nyu.edu

Re: **Freedom of Information Act Request 2022-IAFO-00037**

Mary Pat Dwyer
Brennan Center for Justice
At New York University School of Law
1140 Connecticut Ave, NW
Suite 1150
Washington DC, 20036

Dear Requestor Mary Pat Dwyer,

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Office of Intelligence and Analysis (I&A), dated December 7,2021 and received on December 7, 2021 and requesting:

The Brennan Center specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. **Recordkeeping**: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. **Purchase Agreements and Orders**: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. **Audits**: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5.**Training Materials**: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6.**Legal Justifications**: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. **Information Sharing Communications**: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.9

8. **Nondisclosure Agreements**: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Consistent with 6 C.F.R. Part 5 § 5.5(a) of the DHS FOIA regulations, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, FOIA does permit a 10-day extension of this time period in certain circumstances under 6 C.F.R. Part 5 § 5.5(c). As your request seeks documents that will require a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request pursuant to 6 C.F.R. Part 5 § 5.5(c). If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner. If you would like to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

We are presently processing your request. If any responsive records are located, they will be reviewed for determination of whether any can be released. Please be assured that one of the analysts in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2022-IAFO-00037.** Please refer to this identifier in any future correspondence. The status of your FOIA request is now available online and can be accessed at: https://www.dhs.gov/foia-status, by using this FOIA request number. Status information is updated daily. Alternatively, you can download the DHS eFOIA Mobile App, the free app is available for all Apple and Android devices. With the DHS eFOIA Mobile App, you can submit

FOIA requests or check the status of requests, access all of the content on the FOIA website, and receive updates anyplace, anytime.

If you have any questions, or would like to discuss this matter, please feel free to contact this office at I&AFOIA@HQ.DHS.GOV.

Sincerely,
Kimberly H
Kimberly H
Assistant FOIA Officer

EXHIBIT F

Screengrab of DHS PAL portal taken 03/24/22 showing estimated delivery date of 02/10/22

Requester Details

To modify request details, please update your requester profile or contact the our office for assistance.

Ms. Mary Pat Dwyer
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW
Suite 1150
Washington, DC 20036
dwyerm@brennan.law.nyu.edu

Requester Default Category: Educational or Non-Commercial Scientific

Request Details

Date Requested	12/07/2021
Received Date	12/07/2021
Estimate Delivery Date	02/10/2022
Status	Assigned for Processing

General Information

DHS Component: IA - Office of Intelli

Selected Component: I&A

Please ensure Request Type matches up to the Component

Request Type: I&A FOIA

EXHIBIT G

Message sent by the Brennan Center to I&A through the DHS PAL portal on 03/14/22

View Message

Request Number: 2022-IAFO-00037

Subject*

Request for a Status Update

Message(s)*

Good morning. We would appreciate a status update for this FOIA request (2022-IAFO-00037), which has been "assigned for processing" for two months. Furthermore, we ask that the estimated delivery date for this request (February 10, 2022) be updated, given that the date passed over a month ago.

Close

EXHIBIT J

Azmi, Nimra

From: donotreply@hq.dhs.gov
Sent: Tuesday, August 2, 2022 5:04 PM
To: Jose Gutierrez
Subject: Status Update for Request #2022-IAFO-00037

Dear Jose Gutierrez,

The status of your I&A FOIA request #2022-IAFO-00037 has been updated to the following status 'Closed'. To log into the Department of Homeland Security PAL click on the Application URL below.

https://foiarequest.dhs.gov/

Sincerely,

Department of Homeland Security

EXHIBIT K

U.S. Department of Homeland Security
Washington, DC 20528

Homeland Security

August 2, 2022

Jose Gutierrez
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW
Suite 1150
Washington, DC 20036

Re: **DHS Appeal Number 2022-HQAP-00156**
FOIA Request Number 2022-IAFO-00037

Dear Ms. Gutierrez:

The Department of Homeland Security (DHS) has received your appeal of the response by the Department of Homeland Security, Office of Intelligence and Analysis to your Freedom of Information Act (FOIA) request concerning the constructive denial of your request. On behalf of the Deputy Associate General Counsel for General Law, we acknowledge your appeal and are assigning it number **2022-HQAP-00156** for tracking purposes. Please reference this number in any future communications about your appeal.

A high number of FOIA requests have been received by the Department. Accordingly, we have adopted the court-sanctioned practice of generally handling backlogged appeals on a first-in, first-out basis.[1] While we will make every effort to process your appeal on a timely basis, there may be some delay in resolving this matter.

The status of your appeal is now available online and can be accessed at: **https://foiarequest.dhs.gov/app/CheckStatus.aspx**, by using the appeal number. Status information is updated daily. Alternatively, you can download the DHS eFOIA Mobile App, the free app is available for all Apple and Android devices. With the DHS eFOIA Mobile App, you can submit FOIA requests or check the status of requests, access all of the content on the FOIA website, and receive updates anyplace, anytime.

Should you have any questions concerning the processing of your appeal, please contact me at Eric.Neuschaefer@hq.dhs.gov.

Sincerely,

Eric A. Neuschaefer
Senior Director, Litigation, Appeals, and Policy

[1] Appeals of expedited treatment denials will be handled on an expedited basis.

EXHIBIT L

U.S. Department of Homeland Security
Office of Intelligence and Analysis
Washington, DC 20528

Homeland Security

August 2, 2022

SENT VIA E-MAIL TO: dwyerm@brennan.law.nyu.edu

Mary P. Dwyer
Fellow, Liberty & National Security Program
Brennan Center for Justice at NYU
School of Law
1140 Connecticut Avenue, NW
Suite 1150
Washington, DC 20036

Dear Requester Dwyer:

This is the final response to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), Office of Intelligence and Analysis (I&A), dated December 7, 2021 and your appeal dated April 19, 2022. You were seeking:

"specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. Recordkeeping: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. Purchase Agreements and Orders: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. Use for Purposes Other Than Background Checks**:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. Audits: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5. Training Materials: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6. Legal Justifications: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. Information Sharing Communications: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.9

8. Nondisclosure Agreements: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. Vendor Communications**:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. Internal Communications: All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails."

A I&A FOIA search confirmed that these products were not used. Unfortunately, we were unable to locate or identify any responsive records.

While an adequate search was conducted, you have the right to appeal this determination that no records exist within I&A that would be responsive to your request.[1] Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, to: Privacy Office, Attn: FOIA Appeals, U.S. Department of Homeland Security, 245 Murray Lane, SW, Mail Stop 0655, Washington, D.C. 20528-0655, following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS FOIA regulations are available at www.dhs.gov/foia.

You may contact the FOIA Requester Service Center for the Office of Intelligence and Analysis (I&A) for any further assistance; to discuss any aspect of your request; to discuss reformulation of your request; and/or to discuss an alternative time frame for the processing of your request at:

[1] For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* U.S.C. 552© (2006 & Supp. IV 2010). This response is limited to to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

U.S. Department of Homeland Security
Intelligence and Analysis (I&A)
Email: I&AFOIA@HQ.DHS.GOV
Refer to 2022-IAFO-00037, 2022-HQAP-00156

Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA dispute resolution services it offers. The contact information for OGIS is:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
Email: ogis@nara.gov
Telephone: 202-741-5770
Toll free: 1-877-684-6448
Fax: 202-741-5769

Please note that contacting any agency official (including the FOIA analyst, FOIA Requester Service Center, FOIA Public Liaison) and/or OGIS **is not** an alternative to filing an administrative appeal and **does not** stop the 90-day appeal clock.

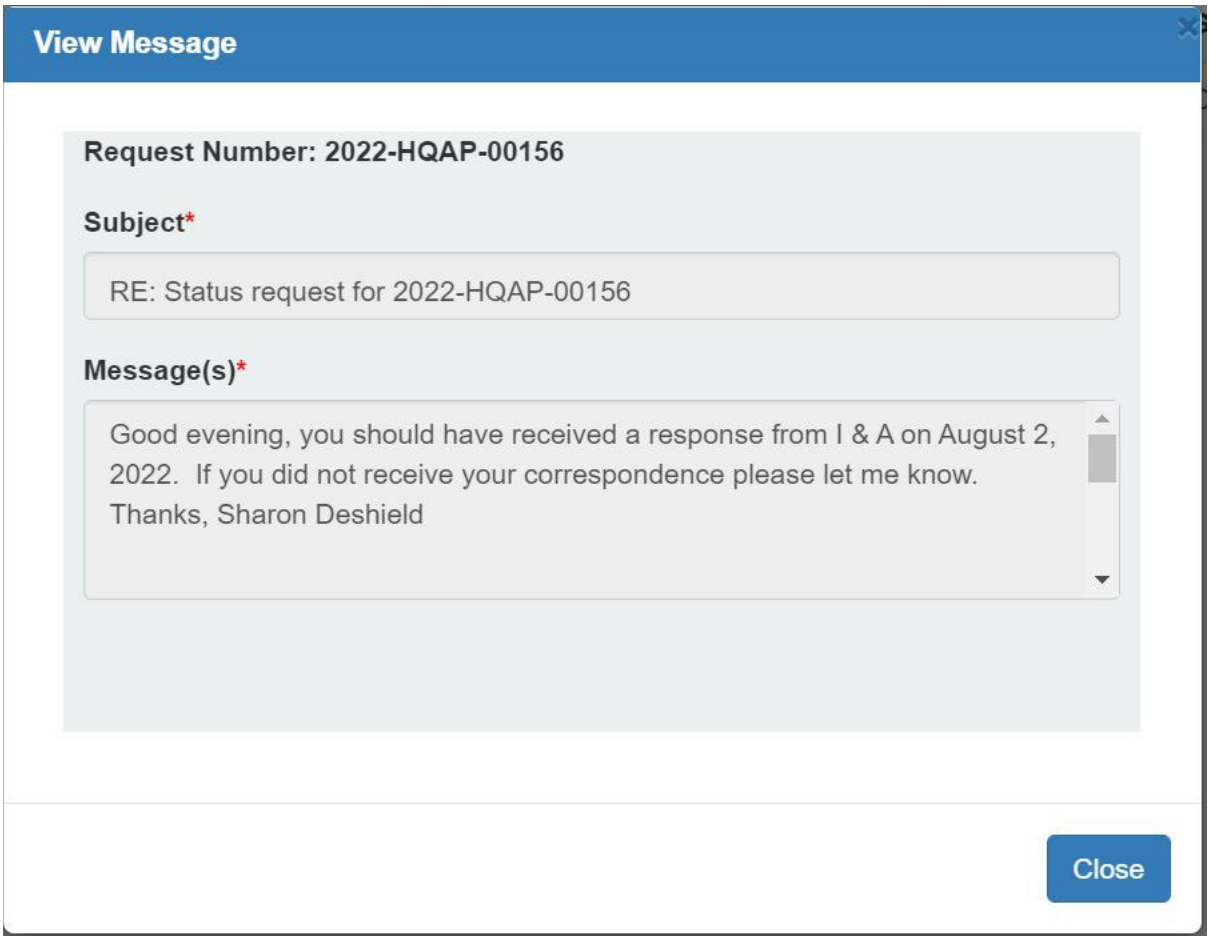
Sincerely,
Meekia W
Meekia W.
Assistant FOIA Officer

EXHIBIT M

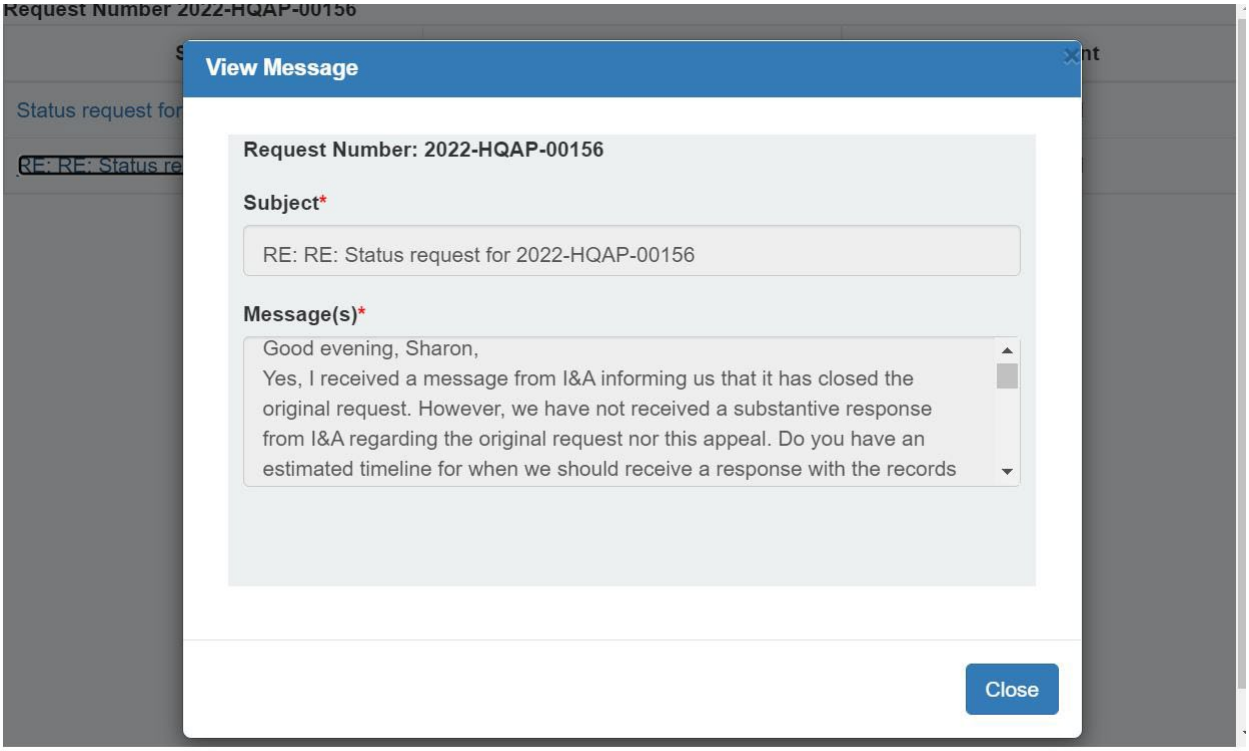
Message from the Department of Homeland Security through the DHS Public Access Link (PAL) portal from August 3, 2022

Request Number 2022-HQAP-00156

Select	Subject	Message(s)	Date Sent
☐	RE: Status request for...	Good evening, you shou...	08/03/2022 06:58:30 PM



Brennan Center's response to the Department of Homeland Security's message through the DHS PAL portal, sent on August 3, 2022.



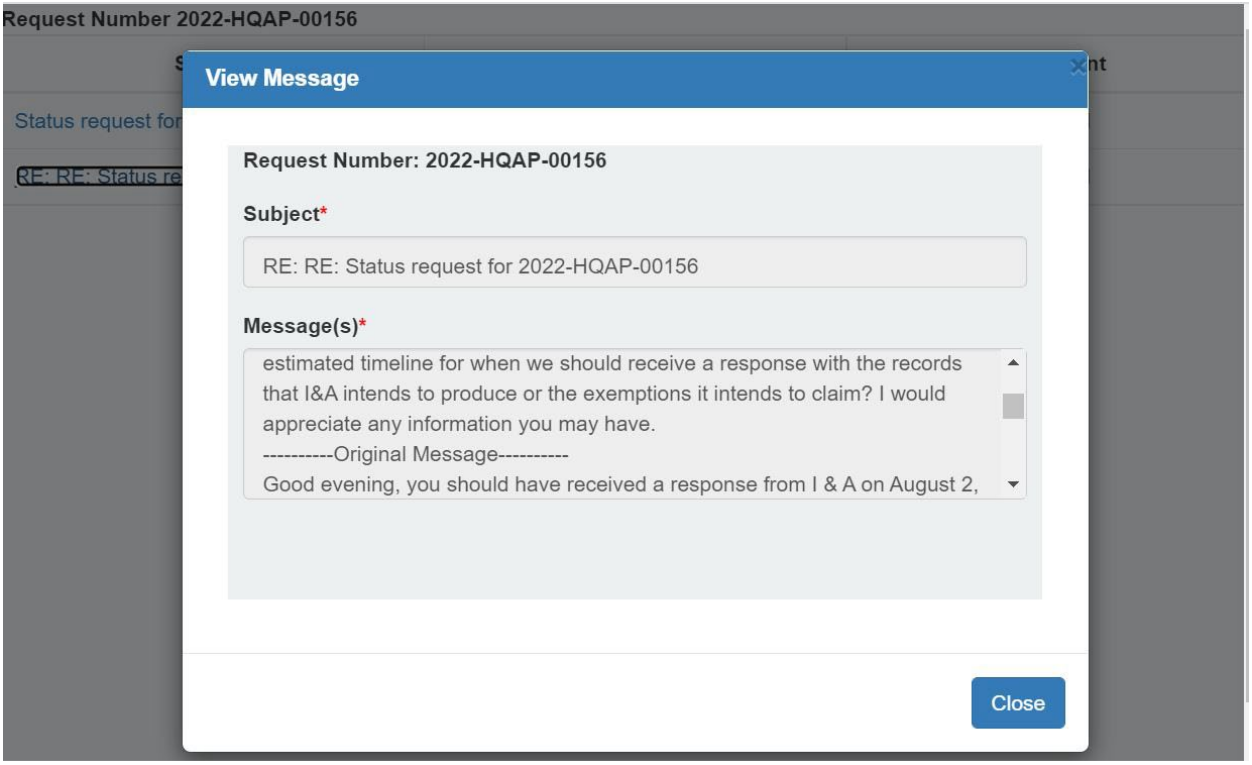


EXHIBIT N

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Request Acknowledgement by Department of Homeland Security
Date: Tuesday, December 7, 2021 4:12:16 PM

Dear Mary Pat Dwyer,

Request Number 2022-ICFO-02964 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2022-ICFO-02964.

Regards,

Department of Homeland Security

EXHIBIT O

From: Jose Gutierrez
To: ICE-FOIA@dhs.gov
Cc: Mary Pat Dwyer
Subject: FOIA Request 2022-ICFO-02964 Follow Up
Date: Wednesday, January 12, 2022 9:41:00 AM

---

d *r*
M *d* *r* *d*

r *d*

José Guillermo Gutiérrez (he/him)
d *d* *M* *d*
d *d* *M*
d d

EXHIBIT P

From: ice-foia@dhs.gov
To: Mary Pat Dwyer
Subject: ICE FOIA Request 2022-ICFO-02964
Date: Thursday, January 13, 2022 3:59:42 PM

January 13, 2022

Mary Pat Dwyer
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW
Suite 1150
Washington, DC 20036

RE: ICE FOIA Case Number 2022-ICFO-02964

Dear Ms. Dwyer:

This acknowledges receipt of your December 07, 2021, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for In general, "social media monitoring" is a term describing the use of social media platforms like Facebook, Twitter, Snapchat, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news, collecting individuals' information, conducting criminal investigations and intelligence, and gauging public sentiment. Publicly available records indicate DHS engages vendors to support its social media monitoring efforts. For example, an article in the Intercept revealed that ICE had two contracts for ShadowDragon products. On the federal procurement website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet. Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority, like border security. In addition, DHS officials have stated publicly that the Department is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection. While those vendors have not been definitively identified, DHS has had at least preliminary conversations with Logically, Inc. Thus, despite widespread public interest in social media monitoring by law enforcement and security officers, and some sparse publicly available information about vendors with whom the Department has contracted or may be contracting, the public lacks sufficient insight into the current capabilities and limitations of DHS's social media monitoring operations, including its use of third-party providers. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by Voyager Analytics, Logically, Inc., or ShadowDragon, or any of their affiliates or subsidiaries (collectively referred to below as "Voyager Analytics, Logically, Inc., or ShadowDragon"), to DHS. (Date Range for Record Search: From 01/01/2016 To 12/07/2021). Your request was received in this office on December 07, 2021.

PLEASE NOTE: Requesters seeking responsive records from the U.S. Immigration and Customs Enforcement (ICE) are encouraged to create a DHS FOIA Public Access Link (PAL) account at: https://foiarequest.dhs.gov. Creating a PAL account will allow you to directly submit your FOIA request to ICE and track the status of your request. In PAL, you can view your prior PAL submissions, sent correspondences, and responsive records. Although PAL is preferred, ICE FOIA will continue to accept FOIA requests via email at ICE-FOIA@ice.dhs.gov or via regular mail at U.S. Immigration and Customs Enforcement, Freedom of Information Act Office, 500 12th St. SW, STOP 5009, Washington, DC 20536-5009.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to educational requesters. As an educational requester, you will be charged 10 cents per page for

duplication; the first 100 pages are free. We will construe the submission of your request as an agreement to pay up to $25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2022-ICFO-02964**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit http://www.dhs.gov/foia-status. Please note that to check the status of a request, you must enter the 2022-ICFO-02964 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Marcus Francis, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

EXHIBIT Q

Message sent by the Brennan Center to ICE through the DHS PAL portal on March 14, 2022

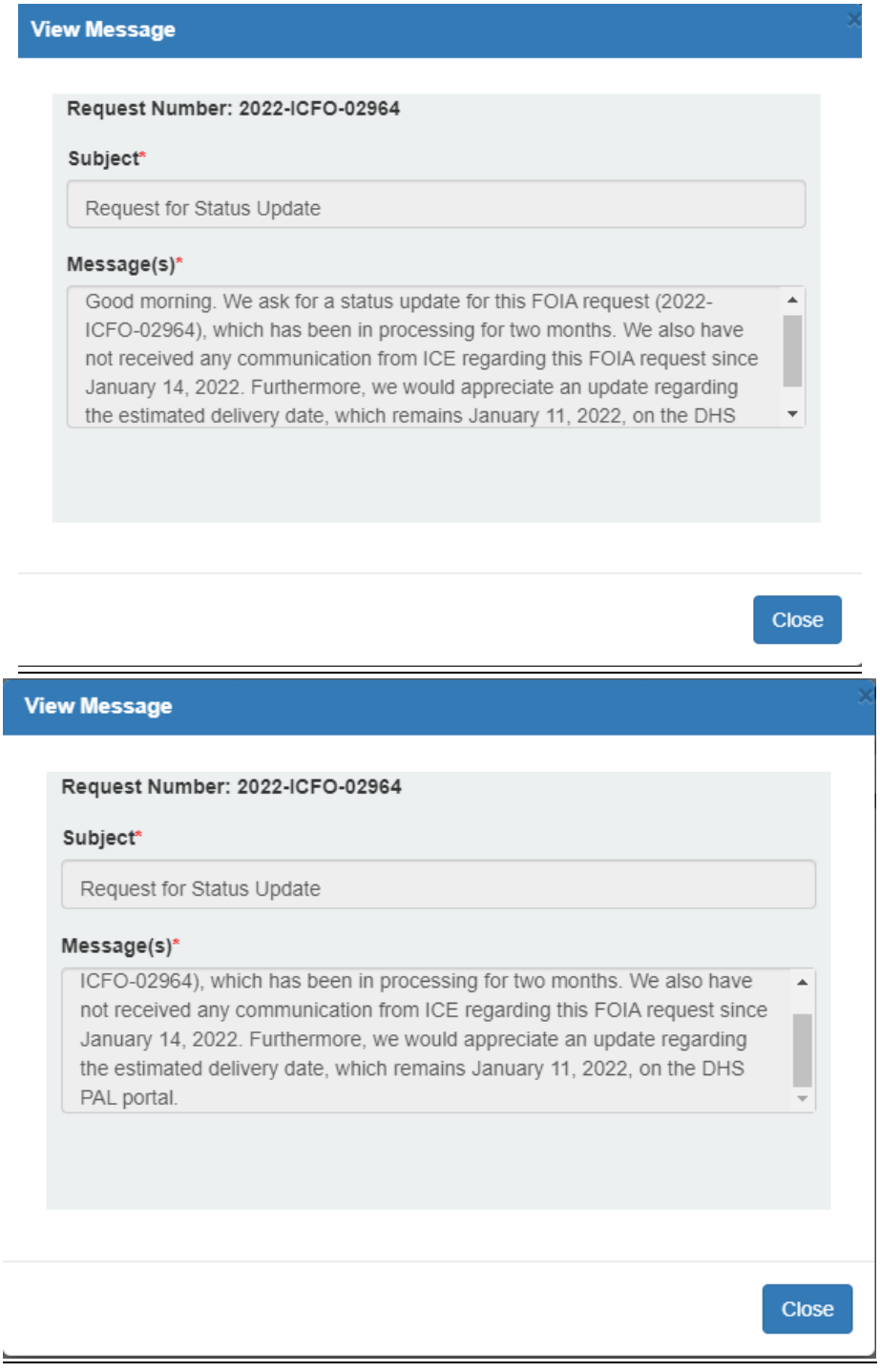


EXHIBIT R

BRENNAN CENTER FOR JUSTICE

April 19, 2022

FOIA APPEAL

Office of the Principal Legal Advisor
Government Information Law Division
500 12th Street S.W., Stop 5900
NE, Washington, D.C. 20536-5900

Via: DHS PAL and mail.

Re: Appeal of Constructive Denial for FOIA Request No. 2022-ICFO-02964

Dear Sir or Madam:

This an appeal for the failure to respond to and constructive denial of Freedom of Information Act ("FOIA") Request No. 2022-ICFO-02964 submitted by the Brennan Center for Justice at New York University School of Law ("Brennan Center") to U.S. Immigration and Customs Enforcement ("ICE").

On December 7, 2021, the Brennan Center submitted a FOIA request to ICE and other components of the Department of Homeland Security ("DHS") seeking information on ICE's use of social media monitoring products and services. (*See* Exhibit A.) In its Request, the Brennan Center sought expedited processing, explaining why these requests should be granted under applicable authorities. (*Id.* at 5-6.)

On December 7, 2021, ICE acknowledged it had received the Brennan Center's FOIA Request. (*See* Exhibit B.) In its notice, ICE also provided an estimated delivery date of January 11, 2022. On January 12, 2022, the Brennan Center sent an email to ICE's FOIA Office because it had not received any documents or a notice from ICE extending its estimated delivery date. (*See* Exhibit C.) On January 13, 2022, ICE sent the Brennan Center a letter acknowledging its receipt of the FOIA Request. (*See* Exhibit D.) In the same letter, ICE invoked a ten-day extension to respond to the Request, stating that it encompassed "numerous documents that will necessitate a thorough and wide-ranging search…." (*Id.* at 1.)

On January 13, 2022, ICE issued a notice to the Brennan Center that the status of the FOIA Request was updated to "processing." (*See* Exhibit E.) On March 14, 2022, the Brennan Center followed up with ICE through the DHS Public Access Link ("PAL") portal, asking for a status update on the FOIA Request after not receiving any updates for two months.

(*See* Exhibit F.) The Brennan Center also asked for an updated estimated delivery date, as the DHS PAL portal still reflected a date of January 11, 2022. (*Id*.) The Brennan Center has not received any further response from ICE.

The Brennan Center hereby appeals (1) ICE's failure to make a final determination or provide responsive documents within the statutory deadline mandated by FOIA; (2) ICE's failure to meet FOIA's expedited determination timeframe; and (3) ICE's constructive denial of the Brennan Center's Request.

Violation of FOIA by Failing to Respond to the Request within the Statutory Timeframes

Upon receipt of a FOIA request, an agency must determine within 20 business days—or, in "unusual circumstances," within 30 business days—whether it will comply with a request and notify the requestor of its determination and reasoning in writing. 5 U.S.C. § 552(a)(6)(A)(i)-(B)(i). ICE claimed a ten-day extension to respond to the Request, (*see* Ex. D at 1), but as of the date of this appeal—over three months after the Brennan Center submitted its FOIA Request—ICE has not issued a final determination or produced a single document in response to the Brennan Center's FOIA Request.

ICE has failed to respond to the Brennan Center's FOIA Request within the timeframe mandated by FOIA. ICE's initial responses merely acknowledged its receipt of the FOIA Request. These communications did not explain "the scope of the documents [that ICE] will produce and the exemptions it will claim." *Jud. Watch, Inc. v. United States Dep't of Homeland Sec*., 895 F.3d 770, 782 (D.C. Cir. 2018) (citation omitted).

Failure to meet FOIA's Expedited Determination Timeframe

FOIA requires expedited processing when "'a request [is] made by a person primarily engaged in disseminating information'" that has an "'urgency to inform the public concerning actual or alleged Federal Government activity.'" *Ctr. for Pub. Integrity v. U.S. Dep't of Def.*, 411 F. Supp. 3d 5, 11 (D.D.C. 2019) (quoting 5 U.S.C. § 552(a)(6)(E)(v)(II)). Where a Request is appropriate for expedition, the agency must process the request "as soon as practicable." *See* 5 U.S.C. § 552(a)(6)(E)(iii); *Brennan Ctr. for Just. at NYU Sch. of L. v. U.S. Dep't of Com*., 498 F. Supp. 3d 87, 97 (D.D.C. 2020). The Brennan Center's Request meets both criteria, as discussed below, and ICE was therefore obligated to respond to the Request promptly.

As a section 501(c)(3) non-profit organization with a mission to analyze and share information with the public, the Brennan Center is an organization that is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II). The Brennan Center meets the statutory definition because it "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." *Long v. Dep't of Homeland Sec.*, 113 F. Supp. 3d 100, 106 (D.D.C. 2015) (quoting 5 U.S.C. § 552(a)(4)(A)(ii)(II)). The Brennan

Center regularly writes and publishes reports and articles and makes appearances on various media outlets, addressing U.S. policy issues ranging from counterterrorism efforts to voting rights to campaign finance laws, and it will continue to do so for the foreseeable future.[1] Accordingly, courts regularly find that the Brennan Center and similar organizations are "primarily engaged in disseminating information" within the meaning of FOIA. *Brennan Ctr. for Just. at NYU Sch. of L.*, 498 F. Supp. 3d at 98 ("Defendants do not dispute the Brennan Center's status as an organization 'primarily engaged in disseminating information,' and other courts have found that similar organizations meet this standard.").[2]

Furthermore, the Brennan Center urgently requires the information sought by its Request to inform the public of federal government activity: DHS's purchase and use of social media monitoring products or services. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II). This information is of interest to the many members of the public concerned about agencies like DHS monitoring and recording their social media activity,[3] and civil society organizations and policymakers are also seeking greater clarity about the collection of social media data by federal agencies.[4] The Brennan Center intends to share any information about ICE's social media surveillance that it obtains through the Request with the public in order to increase public awareness and contribute to timely debate on this issue.

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[1] A complete list of the Brennan Center's recent publications is available at, https://www.brennancenter.org/library/?langcode=en&.

[2] *See also Leadership Conf. on C.R. v. Gonzales*, 404 F. Supp. 2d 246, 260 (D.D.C. 2005) (finding definition met where plaintiff's "mission is to serve as the site of record for relevant and up-to-the minute civil rights news and information" and it "disseminates information regarding civil rights and voting rights to educate the public, promote effective civil rights laws, and ensure their enforcement"); *Protect Democracy Project, Inc. v. U.S. Dep't of Defense*, 263 F. Supp. 3d 293, 298 (D.D.C. 2017) (finding same where plaintiff "intend[ed] to disseminate the information obtained"; "its 'core mission ... is to inform public understanding on operations and activities of government,' including by 'gather[ing] and disseminat[ing] information that is likely to contribute significantly to the public understanding of executive branch operations and activities'"; and it 'intend[ed] to give the public access to documents transmitted via FOIA on [its] website.'" (alterations in original)).

[3] *See, e.g.,* Kevin Matthews, *Don't Spy on Immigrants' Social Media*, CARE2 PETITIONS, https://www.thepetitionsite.com/143/518/650/dont-spy-on-immigrants-social-media-accounts-dhs/ (last visited Dec. 9, 2021); *BREAKING: Homeland Security is spying on 40 million Americans and anyone they talk to online*, ACTION NETWORK, https://actionnetwork.org/petitions/breaking-dhs-will-begin-collecting-social-media-information-on-immigrants-green-card-holders-naturalized-citizens-and-anyone-in-touch-with-them (last visited Dec. 9, 2021).

[4] *See, e.g.,* Faiza Patel et al., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; *ACLU v. DOJ: FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media*, AM. CIV. LIBERTIES UNION https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media (last updated Mar. 26, 2019)

Constructive Denial of the Request Due to ICE's Delayed Response

Not only does ICE's failure to meet statutory deadlines violate FOIA, it also constitutes a constructive denial of the Brennan Center's Request. "Congress evinced an increasing concern over the timeliness of disclosure, recognizing that delay in complying with FOIA requests may be 'tantamount to denial.'" *Brennan Ctr. for Just. at N.Y.U. Sch. of L. v. U.S. Dep't of State*, 300 F. Supp. 3d 540, 546 (S.D.N.Y. 2018) (citation omitted); *accord Int'l Refugee Assistance Project, Inc. v. United States Citizenship & Immigr. Servs*., 551 F. Supp. 3d 136, 164 (S.D.N.Y. 2021). Further, ICE has also failed to respond to multiple follow-up messages from the Brennan Center, which were sent after ICE had failed to issue a determination or produce documents by the statutory deadlines. (*See* Ex. E and F.)

***

For the foregoing reasons, we appeal the denial of expedited processing and constructive denial of our Request. We appreciate your attention to this appeal and expect to receive your response within 20 business days, as required by 5 U.S.C. § 552(a)(6)(A)(ii). Should you have any questions concerning this appeal, please contact the Brennan Center via e-mail at levinsonr@brennan.law.nyu.edu and gutierrezj@brennan.law.nyu.edu.

Sincerely,

/s/ Rachel Levinson-Waldman

Rachel Levinson-Waldman
Deputy Director, Liberty & National Security Program

EXHIBIT A

BRENNAN CENTER FOR JUSTICE

December 7, 2021

Lynn Parker Dupree
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. Avenue, SE
Washington, D.C. 20528-065

Freedom of Information Act Office
Immigration and Customs Enforcement
500 12th Street, SW, Stop 5009
Washington, D.C. 20536-5009

FOIA Officer
U.S. Customs and Border Protection
90 K Street, NE
FOIA Division
Washington, D.C. 20229

Via: Department of Homeland Security Freedom of Information Act Public Access Portal and FOIAOnline.

Re: Freedom of Information Act Request

Dear Sir or Madam:

This is a request to the Department of Homeland Security (DHS), the Office of Intelligence and Analysis (I&A), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP) (collectively referred to below as "DHS" or "the Department"), under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and DHS implementing regulations, 6 C.F.R. §§ 5.1 through 5.36. It is also a request for expedited processing under 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(6), and for a fee waiver under 5 U.S.C. §§ 552(a)(4)(A)(ii) and (iii) and 6 C.F.R. §§ 5.11(d) and (k).

Background

In general, "social media monitoring" is a term describing the use of social media platforms like Facebook, Twitter, Snapchat, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news,

collecting individuals' information, conducting criminal investigations and intelligence, and gauging public sentiment.

Social media monitoring includes four types of activities: (1) monitoring or tracking an individual, a group, or an affiliation (*e.g.*, an online hashtag) via publicly available information; (2) using an informant, a friend of the target, or an undercover account to obtain information from a protected, private, or otherwise unavailable account or page; (3) using software like Voyager Labs' VoyagerAnalytics, Logically, Inc. products like Logically Intelligence, or ShadowDragon products such as SocialNet or OI Monitor to monitor individuals, groups, associations, or locations; or (4) issuing a subpoena, warrant, or other form of legal process to a social media platform for data held by that platform.

Social media is a crucial forum for the exchange of ideas, particularly in this time of unprecedented public activism and political engagement. Social media platforms like Facebook, Twitter, and Instagram have proven to be an invaluable tool for connecting and organizing around a variety of issues and across diverse movements. In a time when social media is recognized as akin to the "modern public square,"[1] social media monitoring has significant civil rights implications. Like other forms of surveillance, social media monitoring impacts what people say and with whom they interact online. The deleterious effects of surveillance on free speech have been well documented in empirical research.[2] The use of third-party vendors to facilitate social media monitoring raises additional concerns, including reduced transparency regarding the scope and capabilities of these services.

Publicly available records indicate DHS engages vendors to support its social media monitoring efforts. For example, an article in the *Intercept* revealed that ICE had two

[1] *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017) (quoting *Reno v. Am. Civ. Liberties Union*, 521 U. S. 844, 868 (1997)).

[2] *See, e.g.*, Faiza Patel et al., *Social Media Monitoring*, BRENNAN CENTER FOR JUSTICE (May 22, 2019), https://www.brennancenter.org/publication/social-media-monitoring; Jonathon W. Penney, *Chilling Effects: Online Surveillance and Wikipedia Use*, 31 BERKELEY TECH. L. J. 1, 117-182 (2016), https://btlj.org/data/articles2016/vol31/31_1/0117_0182_Penney_ChillingEffects_WEB.pdf; Elizabeth Stoycheff, *Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of NSA Internet Monitoring*, 93 JOURNALISM AND MASS COMM. Q. 2, 296-311 (2016), https://journals.sagepub.com/doi/pdf/10.1177/1077699016630255#articleCitationDownloadContainer; Matthew A. Wasserman, *First Amendment Limitations on Police Surveillance: The Case of the Muslim Surveillance Program*, 90 N.Y.U. L. REV. 5, 1786-1826 (2015), https://www.nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-90-5-Wasserman.pdf.

contracts for ShadowDragon products.[3] On the federal procurement website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet.[4] Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority, like border security.[5] In addition, DHS officials have stated publicly that the Department is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection.[6] While those vendors have not been definitively identified, DHS has had at least preliminary conversations with Logically, Inc.[7]

Thus, despite widespread public interest in social media monitoring by law enforcement and security officers,[8] and some sparse publicly available information about vendors with

[3] Michael Kwet, *ShadowDragon: Inside the Social Media Surveillance Software that can Watch Your Every Move*, INTERCEPT (Sept. 21, 2021), https://theintercept.com/2021/09/21/surveillance-social-media-police-microsoft-shadowdragon-kaseware/.

[4] *E.g.*, Contract between DHS and Panamerica Computers, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000107_7012_HSHQDC12D00013_7001 (last visited Dec. 7, 2021); Contract between DHS and C & C International Computers & Consultants, Inc., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD20FR0000090_7012_HSHQDC12D00011_7001 (last visited Dec. 7, 2021); Contract between DHS and Software Information Resource Corp., USASPENDING, https://www.usaspending.gov/award/CONT_AWD_70CMSD21FR0000080_7012_NNG15SD74B_8000 (last visited Dec. 7, 2021).

[5] *Border Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/border-security/ (last visited Nov. 2, 2021); *National Security*, VOYAGER LABS, https://voyagerlabs.co/solutions/national-security/ (last visited Nov. 2, 2021).

[6] Rachael Levy, *Homeland Security Considers Outside Firms to Analyze Social Media After Jan. 6 Failure*, WALL ST. J. (Aug. 15, 2021), https://www.wsj.com/articles/homeland-security-considers-outside-firms-to-analyze-social-media-after-jan-6-failure-11629025200

[7] *Id.*

[8] *See, e.g.*, Johana Bhuiyan & Sam Levin, *Revealed: the software that studies your Facebook friends to predict who may commit a crime*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/police-surveillance-technology-voyager; Sam Levin & Johana Bhuiyan, *Exclusive: LAPD partnered with tech firm that enables secretive online spying*, GUARDIAN (Nov. 17, 2021), https://www.theguardian.com/us-news/2021/nov/17/los-angeles-police-surveillance-social-media-voyager; Sam Levin, *Revealed: LAPD officers told to collect social media data on every civilian they stop*, GUARDIAN (Sept. 8, 2021), https://www.theguardian.com/us-news/2021/sep/08/revealed-los-angeles-police-officers-gathering-social-media; Leah Hope, *Chicago police monitor social media as crime-fighting strategy; sociologist, ACLU urge caution*, ABC7 EYEWITNESS NEWS (Aug. 13, 2020), https://abc7chicago.com/chicago-police-aclu-columbia-university-professor-desmond-patton-alderman-brendan-reilly/6369604/; Kwet, *supra* note 3.

whom the Department has contracted or may be contracting, the public lacks sufficient insight into the current capabilities and limitations of DHS's social media monitoring operations, including its use of third-party providers. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by Voyager Analytics, Logically, Inc., or ShadowDragon, or any of their affiliates or subsidiaries (collectively referred to below as "Voyager Analytics, Logically, Inc., or ShadowDragon"), to DHS.

Request

The Brennan Center specifically requests records under FOIA that were in DHS's possession or control from January 1, 2016, through the date of the production of records, in the following categories:

1. **Recordkeeping**: All recordkeeping, logs, or digests reflecting the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services for social media monitoring, or searches of social media for purposes including criminal investigations, situational awareness, preparation for events, monitoring of protests or other gatherings, or public safety.

2. **Purchase Agreements and Orders**: All records reflecting a contract or agreement to purchase, acquire, use, test, license, or evaluate any product or service developed by Voyager Labs, Logically, Inc., or ShadowDragon.

3. **Use for Purposes Other Than Background Checks:** All records reflecting the number of circumstances in which Voyager Labs, Logically, Inc., or ShadowDragon products or services were used to collect information about individuals from social media for purposes other than background checks for DHS employment, including regarding protest activity, as well as the number of such matters in which an individual or group was referred to prosecutors.

4. **Audits**: All records of, or communications regarding, audits or internal reviews of the Department's use of Voyager Labs, Logically, Inc., or ShadowDragon products or services.

5. **Training Materials**: All training documents pertaining to the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, including drafts, and including but not limited to PowerPoint presentations, handouts, manuals, or lectures.

6. **Legal Justifications**: All records reflecting final agency memoranda articulating the legal justification(s) for the use of Voyager Labs, Logically, Inc., or ShadowDragon products or services, or other social media monitoring services.

7. **Information Sharing Communications**: All communications with the Federal Bureau of Investigation, state or local law enforcement agencies, or fusion centers, regarding use of Voyager Labs, Logically, Inc., or ShadowDragon products or services or information obtained from those products or services. This includes, but is not limited to, communications regarding information sharing in response to protests from May 2020 through August 2020.[9]

8. **Nondisclosure Agreements**: All records regarding DHS's nondisclosure or confidentiality obligations in relation to contracts or use agreements with Voyager Labs, Logically, Inc., or ShadowDragon.

9. **Vendor Communications:** All email communications with representatives of Voyager Labs, Logically, Inc., or ShadowDragon concerning their social media monitoring products or services, including the attachments to those emails.

10. **Internal Communications:** All email communications among DHS employees, officials, or contractors regarding social media monitoring products or services offered by Voyager Labs, Logically, Inc., or ShadowDragon, including the attachments to those emails.

Expedited Processing

The Brennan Center requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E) and 6 C.F.R. § 5.5(e). There is a "compelling need" for these records because the information

[9] *See, e.g.*, DEP'T OF JUSTICE OFFICE OF PUB. AFFAIRS, ATTORNEY GENERAL WILLIAM P. BARR'S STATEMENT ON PROTESTS IN WASHINGTON, D.C. (June 2, 2020), https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-protests-washington-dc; Elizabeth Crisp, *Leaked Document Shows SWAT Teams, Sniper-trained Units Sent to D.C. Amid Protests*, NEWSWEEK (June 5, 2020), https://www.newsweek.com/leaked-document-shows-swat-teams-sniper-trained-units-sent-dc-amid-protests-1509087; Colleen Long et al., *Trump's show of federal force sparking alarm in cities*, WASH. POST (July 21, 2020), https://www.washingtonpost.com/politics/courts_law/trump-to-send-federal-agents-to-chicago-maybe-other-cities/2020/07/21/af5c5a98-cb67-11ea-99b0-8426e26d203b_story.html; Jasmine Aguilera, *ICE Agents Detain a Police Brutality Protester, Reportedly a U.S. Citizen and Military Vet, in New York City*, TIME (June 6, 2020), https://time.com/5849517/protester-new-york-city-protests-immigration-ice/; Zolan Kanno-Youngs, *U.S. Watched George Floyd Protests in 15 Cities Using Aerial Surveillance*, NEW YORK TIMES (June 19, 2020), https://www.nytimes.com/2020/06/19/us/politics/george-floyd-protests-surveillance.html.

requested is urgently required by an organization "primarily engaged in disseminating information" to "inform the public concerning actual or alleged Federal Government activity." U.S.C. §§ 552(a)(6)(E)(i)(I), (a)(6)(E)(v); 6 C.F.R. § 5.5(e)(1)(ii).

The Brennan Center is a section 501(c)(3) non-profit organization that is "primarily engaged in disseminating information." 5 U.S.C. § 552(a)(6)(E)(v)(II) and 6 C.F.R. § 5.5(e)(1)(ii). The U.S. District Court for the District of Columbia has found that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations. *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (quoting *Elec. Privacy Info. Ctr. v. Dep't of Def.*, 241 F. Supp. 2d 5, 11 (D.D.C. 2003)). The Brennan Center regularly writes and publishes reports and articles and makes appearances on various media outlets, addressing U.S. policy issues ranging from counterterrorism efforts to voting rights to campaign finance laws, and it will continue to do so for the foreseeable future.[10] *Brennan Ctr. for Just. at NYU Sch. of L. v. Dep't of Commerce*, 498 F. Supp. 3d 87, 98 (D.D.C. 2020) ("Defendants do not dispute the Brennan Center's status as an organization 'primarily engaged in disseminating information,' and other courts have found that similar organizations meet this standard.").

Furthermore, the Brennan Center urgently requires the information sought by this request to inform the public of federal government activity: DHS's purchase and use of social media monitoring products or services. *See* 5 U.S.C. § 552(a)(6)(E)(v)(II); 6 C.F.R. § 5.5(e)(1)(ii). This information is of interest to the many members of the general public concerned about agencies like DHS monitoring and recording their social media activity[11]**.** Civil society organizations are also seeking greater clarity about the collection of social

[10]A complete list of the Brennan Center's recent publications is available at, https://www.brennancenter.org/search/?type=analysis,archive,policy_solution,report,resource,statement,testimony,fact_sheet,explainer,series,expert_brief,legislation,newsletter,project&.

[11] *See, e.g.*, Kevin Matthews, *Don't Spy on Immigrants' Social Media*, CARE2 PETITIONS, https://www.thepetitionsite.com/143/518/650/dont-spy-on-immigrants-social-media-accounts-dhs/ (last visited Dec. 7, 2021); *BREAKING: Homeland Security is spying on 40 million Americans and anyone they talk to online*, ACTION NETWORK, https://actionnetwork.org/petitions/breaking-dhs-will-begin-collecting-social-media-information-on-immigrants-green-card-holders-naturalized-citizens-and-anyone-in-touch-with-them (last visited Dec. 7, 2021).

media data by federal agencies.[12] The Brennan Center intends to share any information about the use of Voyager Analytics, Logically, Inc., or ShadowDragon to surveil social media that it obtains through this request with the public.

Fee Waiver

The Brennan Center also requests a waiver of all search, review, and duplication fees associated with this request. The requester is eligible for a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(d) and (k), and for a waiver of all fees, including duplication fees, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii) and 6 C.F.R. § 5.11(k)(1).

First, the Brennan Center plans to analyze, publish, and publicly disseminate information obtained from this request. The requested records are not sought for commercial use and will be disclosed to the public at no cost.

Second, the Brennan Center qualifies as a "representative of the news media" for the same reasons that it is "primarily engaged in dissemination of information." The Brennan Center "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience." 5 U.S.C. § 552(a)(4)(A)(ii); *Nat'l Sec. Archive v. Dep't of Def.*, 880 F.2d 1381, 1387 (D.C. Cir. 1989). It uses this information to draft reports on, and analyses of, issues of public concern.[13] *Cf. Elec. Privacy Info. Ctr.*, 241 F. Supp. 2d at 11-12 (finding that the Electronic Privacy Information Center was representative of the news media based on its publication

[12] *See, e.g.*, Patel, et al., *supra* note 2; *ACLU v. DOJ: FOIA Lawsuit Seeking Information on Federal Agencies' Surveillance of Social Media*, AM. CIV. LIBERTIES UNION https://www.aclu.org/cases/aclu-v-doj-foia-lawsuit-seeking-information-federal-agencies-surveillance-social-media (last updated Mar. 26, 2019)

[13] *See, e.g.*, Harsha Panduranga, *Community Investment, Not Criminalization*, BRENNAN CENTER FOR JUSTICE (June 17, 2021), https://www.brennancenter.org/our-work/research-reports/community-investment-not-criminalization; Rachel Levinson-Waldman & Harsha Panduranga, *Invasive and Ineffective: DHS Surveillance Since 9/11*, BRENNAN CENTER FOR JUSTICE (Sept. 15, 2021), https://www.brennancenter.org/our-work/analysis-opinion/invasive-and-ineffective-dhs-surveillance-911; Laura Hecht-Felella, *The Fourth Amendment in the Digital Age*, BRENNAN CENTER FOR JUSTICE (Mar. 18, 2021), https://www.brennancenter.org/sites/default/files/2021-03/Fourth-Amendment-Digital-Age-Carpenter.pdf; Rachel Levinson-Waldman & Ángel Díaz, *How to Reform Police Monitoring of Social Media*, BRENNAN CENTER FOR JUSTICE (July 9, 2020), https://www.brennancenter.org/our-work/analysis-opinion/how-reform-police-monitoring-social-media.

of seven books about national and newsletter relating to privacy and civil rights); *see also Nat'l Sec. Archive*, 880 F.2d at 1386 (deeming the National Security Archive a representative of the news media after it published one book and indicated its intention to publish a set of documents on national and international politics and nuclear policy). The Brennan Center is therefore entitled to a waiver of search and review fees pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) and 6 C.F.R. §§ 5.11(e).

The Brennan Center also is also entitled to a waiver because it is an "educational institution." 6 C.F.R. §§ 5.11(d). The Brennan Center qualifies as an educational institution because it is affiliated with New York University School of Law, which is plainly an educational institution under the definition provided in 6 C.F.R. § 5.11(d)(1).

The Brennan Center is also entitled to a waiver of all fees, including duplication fees. First, the subject of the requested records clearly concerns "the operations or activities of the federal government," namely DHS's social media monitoring. 5 U.S.C. § 552(a)(4)(A)(iii); 6 C.F.R. § 5.11(k)(1). This connection to the federal government is "direct and clear, not remote or attenuated." *See* 6 C.F.R. § 5.11(k)(2)(i). Disclosure of the requested records is also in the public interest, because it is "likely to contribute to an increased public understanding" of how and to what extent the agency is engaging in social media monitoring. *See* 6 C.F.R. §§ 5.11(k)(2)(ii). Given the dearth of public information on DHS's involvement with and expenditures on social media monitoring activity, disclosure will significantly enhance the public's understanding of this subject. *See* 6 C.F.R. § 5.11(k)(2)(iv).

Finally, disclosure is not primarily in the Brennan Center's commercial interests. *See* 6 C.F.R. § 5.11(k)(3). As stated above, the Brennan Center plans to make any information disclosed as a result of this request available to the public at no cost. A fee waiver would therefore fulfill Congress's legislative intent that FOIA be "liberally construed in favor of waivers for noncommercial requesters." *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987) (quoting 132 CONG. REC. 27, 190 (1986) (Statement of Sen. Leahy)).

Should DHS choose to charge a fee, please inform me via email of the total charges in advance of fulfilling this request at dwyerm@brennan.law.nyu.edu.

Response Required

The Brennan Center appreciates DHS's attention to this request and expects to receive a response on its request for expedited processing within ten (10) business days. *See* 5 U.S.C.

§ 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(e)(4). I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi); 6 C.F.R. § 5.5(e)(3).

We also request that you provide us with an estimated completion date, as required by 5 U.S.C. § 552(a)(7)(B)(ii). If the Request is denied in whole or in part, we ask that you justify all withholdings by reference to specific exemptions to FOIA. 5 U.S.C. § 552(a)(2). We expect the release of all segregable portions of otherwise exempt material. 5 U.S.C. § 552(a)(8)(ii)(II).

We reserve the right to appeal a decision to withhold any information or to deny a waiver of fees. We also request that you provide us with the documents in electronic format where possible.

Should you have any questions concerning this request, please contact me via e-mail at dwyerm@brennan.law.nyu.edu.

Sincerely,

/s/ Mary Pat Dwyer

Mary Pat Dwyer
Fellow, Liberty & National Security Program

EXHIBIT B

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Request Acknowledgement by Department of Homeland Security
Date: Tuesday, December 7, 2021 4:12:16 PM

Dear Mary Pat Dwyer,

Request Number 2022-ICFO-02964 has been assigned to the request you submitted. In all future correspondence regarding this request please reference request number 2022-ICFO-02964.

Regards,

Department of Homeland Security

EXHIBIT C

From: Jose Gutierrez
To: ICE-FOIA@dhs.gov
Cc: Mary Pat Dwyer
Subject: FOIA Request 2022-ICFO-02964 Follow Up
Date: Wednesday, January 12, 2022 9:41:00 AM

Good morning,

We noticed that the estimated delivery date for our FOIA request (2022-ICFO-02964) was on January 11, 2022, and the DHS PAL portal indicates this request has not been assigned for processing yet. Please update us regarding whether the estimated delivery date has been extended (and to what date), as well as whether our requests for a fee waiver and expedited processing have been approved.

Thank you and have a great day,

José Guillermo Gutiérrez (he/him)
Research and Program Associate, Liberty & National Security Program
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW, Suite 1150
Washington, DC, 20036
Cell: (213)709-9339
Phone: (202)753-5922

EXHIBIT D

From: ice-foia@dhs.gov
To: Mary Pat Dwyer
Subject: ICE FOIA Request 2022-ICFO-02964
Date: Thursday, January 13, 2022 3:59:42 PM

January 13, 2022

Mary Pat Dwyer
Brennan Center for Justice at NYU School of Law
1140 Connecticut Ave. NW
Suite 1150
Washington, DC 20036

RE: ICE FOIA Case Number 2022-ICFO-02964

Dear Ms. Dwyer:

This acknowledges receipt of your December 07, 2021, Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), for In general, "social media monitoring" is a term describing the use of social media platforms like Facebook, Twitter, Snapchat, and Instagram to gather information for purposes including, but not limited to, identifying potential threats, reviewing breaking news, collecting individuals' information, conducting criminal investigations and intelligence, and gauging public sentiment. Publicly available records indicate DHS engages vendors to support its social media monitoring efforts. For example, an article in the Intercept revealed that ICE had two contracts for ShadowDragon products. On the federal procurement website usaspending.gov, the Brennan Center located three ICE contracts to purchase ShadowDragon products, specifically OI Monitor and SocialNet. Another company, Voyager Labs, markets its materials as useful for issue areas in which DHS operates – including matters in its exclusive authority, like border security. In addition, DHS officials have stated publicly that the Department is seeking third-party vendors to enhance its social media monitoring efforts in the wake of the January 6, 2021 insurrection. While those vendors have not been definitively identified, DHS has had at least preliminary conversations with Logically, Inc. Thus, despite widespread public interest in social media monitoring by law enforcement and security officers, and some sparse publicly available information about vendors with whom the Department has contracted or may be contracting, the public lacks sufficient insight into the current capabilities and limitations of DHS's social media monitoring operations, including its use of third-party providers. Accordingly, we seek information and documents about the nature of social media monitoring services provided or marketed by Voyager Analytics, Logically, Inc., or ShadowDragon, or any of their affiliates or subsidiaries (collectively referred to below as "Voyager Analytics, Logically, Inc., or ShadowDragon"), to DHS. (Date Range for Record Search: From 01/01/2016 To 12/07/2021). Your request was received in this office on December 07, 2021.

PLEASE NOTE: Requesters seeking responsive records from the U.S. Immigration and Customs Enforcement (ICE) are encouraged to create a DHS FOIA Public Access Link (PAL) account at: https://foiarequest.dhs.gov. Creating a PAL account will allow you to directly submit your FOIA request to ICE and track the status of your request. In PAL, you can view your prior PAL submissions, sent correspondences, and responsive records. Although PAL is preferred, ICE FOIA will continue to accept FOIA requests via email at ICE-FOIA@ice.dhs.gov or via regular mail at U.S. Immigration and Customs Enforcement, Freedom of Information Act Office, 500 12th St. SW, STOP 5009, Washington, DC 20536-5009.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, ICE processes FOIA requests according to their order of receipt. Although ICE's goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10- day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, ICE will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to educational requesters. As an educational requester, you will be charged 10 cents per page for

duplication; the first 100 pages are free. We will construe the submission of your request as an agreement to pay up to $25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2022-ICFO-02964**. Please refer to this identifier in any future correspondence. To check the status of an ICE FOIA/PA request, please visit http://www.dhs.gov/foia-status. Please note that to check the status of a request, you must enter the 2022-ICFO-02964 tracking number. If you need any further assistance or would like to discuss any aspect of your request, please contact the FOIA office. You may send an e-mail to ice-foia@ice.dhs.gov, call toll free (866) 633-1182, or you may contact our FOIA Public Liaison, Marcus Francis, in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Regards,

ICE FOIA Office
Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W., Stop 5009
Washington, D.C. 20536-5009
Telephone: 1-866-633-1182
Visit our FOIA website at www.ice.gov/foia

EXHIBIT E

From: palhelpdesk@hq.dhs.gov
To: Mary Pat Dwyer
Subject: Status Update for Request #2022-ICFO-02964
Date: Thursday, January 13, 2022 3:59:13 PM

Dear Mary Pat Dwyer,

The status of your ICE FOIA request #2022-ICFO-02964 has been updated to the following status 'In Process'. To log into the Department of Homeland Security PAL click on the Application URL below.

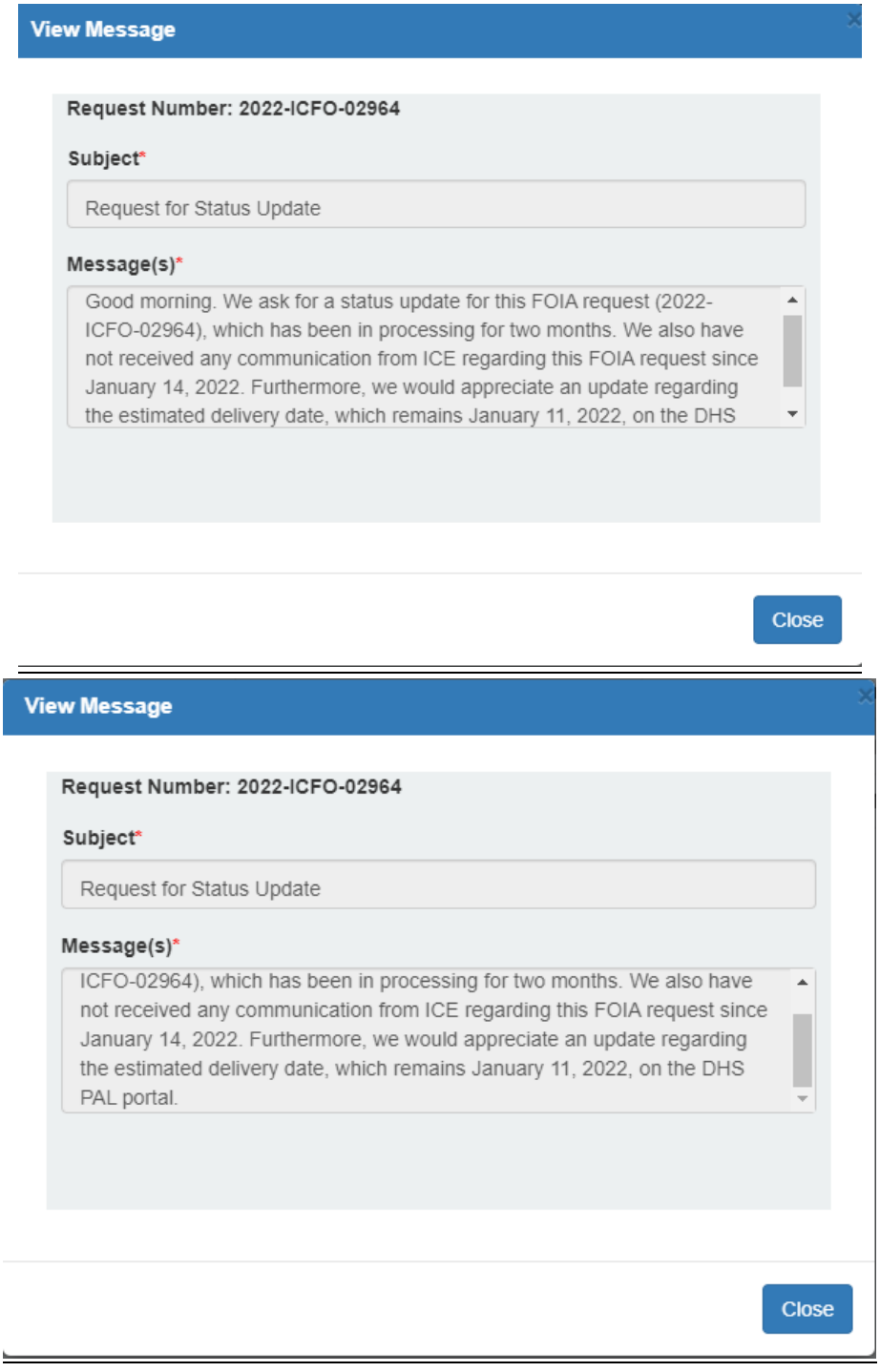
https://foiarequest.dhs.gov/

Sincerely,

Department of Homeland Security

EXHIBIT F

Message sent by the Brennan Center to ICE through the DHS PAL portal on March 14, 2022



View Message

Request Number: 2022-ICFO-02964

Subject*

Request for Status Update

Message(s)*

Good morning. We ask for a status update for this FOIA request (2022-ICFO-02964), which has been in processing for two months. We also have not received any communication from ICE regarding this FOIA request since January 14, 2022. Furthermore, we would appreciate an update regarding the estimated delivery date, which remains January 11, 2022, on the DHS

Close

View Message

Request Number: 2022-ICFO-02964

Subject*

Request for Status Update

Message(s)*

ICFO-02964), which has been in processing for two months. We also have not received any communication from ICE regarding this FOIA request since January 14, 2022. Furthermore, we would appreciate an update regarding the estimated delivery date, which remains January 11, 2022, on the DHS PAL portal.

Close

EXHIBIT S

Status request for

View Message

Request Number: 2022-ICAP-00591

Subject*

Status request for 2022-ICAP-00591

Message(s)*

Good afternoon,
I am reaching out to ask for a status update on our FOIA Appeal to Immigration and Customs Enforcement. The DHS PAL portal indicates that this appeal is estimated to be completed on May 22, 2022, and we have not received correspondence from ICE regarding the appeal.

Close

Request Number 2022-HQAP-00156

Status request for

View Message

Request Number: 2022-HQAP-00156

Subject*

Status request for 2022-HQAP-00156

Message(s)*

of Intelligence and Analysis. The DHS PAL portal indicates that this appeal is estimated to be completed on May 22, 2022, and we have not received correspondence from DHS regarding the appeal.
Thank you and have a great day.
Jose Guillermo Gutierrez

Close

EXHIBIT T

Azmi, Nimra

From: donotreply@hq.dhs.gov
Sent: Thursday, June 2, 2022 :5 AM
To: Jose Gutierrez
Subject: Status Update for Request #2022-I AP-005

Dear Jose Gutierrez,

The status of your IC Appeals request #2022-ICAP-00 has been updated to the following status 'In Process'. To log into the Department of Homeland Security PAL click on the Application URL below.

https://foiarequest.dhs.gov/

Sincerely,

Department of Homeland Security

EXHIBIT U

From: donotreply@hq.dhs.gov
To: Jose Gutierrez
Subject: Status Update for Request #2022-ICFO-02964
Date: Tuesday, July 12, 2022 8:55:39 AM

Dear Jose Gutierrez,

The status of your ICE FOIA request #2022-ICFO-02964 has been updated to the following status 'Closed'. To log into the Department of Homeland Security PAL click on the Application URL below.

https://foiarequest.dhs.gov/

Sincerely,

Department of Homeland Security